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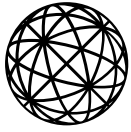
**Rethinking Laws and Policies  
that Leave LGBTIQ+ Sri Lankans Behind**

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## **Acknowledgements and Disclaimer**

This report was commissioned by the Westminster Foundation for Democracy (WFD) as part of the Commonwealth Equality Project. It was made possible through funding received from the United Kingdom's Foreign Commonwealth and Development Office (FCDO).

This report was prepared by Dharini Priscilla, Michael Mendis and Pasan Jayasinghe.

The authors appreciate the review and comments made by: Visakesa Chandrasekaram, Rosanna Flamer-Caldera, Hasanah Isadeen, Thenu Ranketh and Ambika Satkunanathan; Dinesha Samaratne; and, from WFD, Priyanga Hettiarachi (Country Representative) and Aingkaran Kugathasan (Programme Co-ordinator).

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## GLOSSARY

<b>ART</b>	Assistive Reproductive Technology
<b>CEDAW</b>	Committee on the Elimination of Discrimination of Women
<b>CLG</b>	Company Limited by Guarantee
<b>CSO</b>	Civil Society Organisation
<b>DOL</b>	Department of Labour
<b>EFC</b>	Employers Federation of Ceylon
<b>FHB</b>	Family Health Bureau
<b>FPA</b>	Family Planning Association
<b>FR</b>	Fundamental Rights
<b>GA</b>	Government Agent (District Secretary)
<b>GRC</b>	Gender Recognition Certificate
<b>HIV/AIDS</b>	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
<b>HRCSL</b>	Human Rights Commission of Sri Lanka
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ILO</b>	International Labour Organization
<b>IPV</b>	Intimate Partner Violence
<b>LGBTIQ+</b>	Lesbian, Gay, Bisexual, Trans, Queer/Questioning, Intersex and Other
<b>LLC</b>	Limited Liability Company
<b>MOE</b>	Ministry of Education
<b>MOH</b>	Ministry of Health

## GLOSSARY

<b>MSM</b>	Men who have Sex with Men
<b>NGO</b>	Non-Governmental Organization
<b>NIC</b>	National Identity Card
<b>NSACP</b>	National STD/AIDS Control Programme
<b>PDVA</b>	Prevention of Domestic Violence Act
<b>PHI</b>	Public Health Inspector
<b>RTI</b>	Right to Information
<b>SGBV</b>	Sexual and Gender-Based Violence
<b>SLMA</b>	Sri Lanka Medical Association
<b>SLPC</b>	Sri Lanka Press Council
<b>SOGIESC</b>	Sexual Orientation, Gender Identity and Expression and Sex Characteristics
<b>SRH</b>	Sexual and Reproductive Health
<b>STI</b>	Sexually Transmitted Infection
<b>UDA</b>	Urban Development Authority
<b>UN</b>	United Nations
<b>UNESCO</b>	United Nations Education, Scientific, Cultural Organization

## EXECUTIVE SUMMARY

This Gap Analysis examines a wide variety of laws and policies in Sri Lanka to demonstrate how LGBTIQ+ Sri Lankans are vulnerable to discrimination across several critical areas such as education, healthcare and housing. Our study analyses the ways in which various assumptions and omissions found in our laws and policies leave LGBTIQ+ Sri Lankans behind.

To invoke a political slogan that has recently gained popularity, all Sri Lankans are entitled to 'one country, one law.' This Gap Analysis identifies the clear differences in how Sri Lankan laws are experienced by groups like LGBTIQ+ Sri Lankans who live mostly in the margins of Sri Lankan society. Laws and policies are often couched in neutral and general terms. However, the various ambiguities and broad discretion they afford to authorities almost always become trapdoors through which many LGBTIQ+ Sri Lankans fall. Depending on who you are, and what is important to you, Sri Lanka has always been 'one country, many arbitrary laws'.

We intend this Gap Analysis to be a resource for all Sri Lankans in understanding how LGBTIQ+ Sri Lankans are not able to enjoy the rights, protections, and services they are entitled to at the same level as all other Sri Lankans, including the obstacles they encounter in enjoying those rights. Finally, we intend this document to be a resource for lawmakers, policymakers, public authorities and community leaders. We hope that this Gap Analysis will be useful to them in considering legal, policy and administrative changes. Such reforms would improve the lives of all Sri Lankans, regardless of their sexual orientations and gender identities.

### Structure

This Gap Analysis is organised under specific topics which are further organised into specific themes. Each theme identifies an 'Ideal setting' or a few of them as relevant. Against these Ideal settings, the applicable 'Current settings in Sri Lanka' are laid out, and from them we extrapolate and analyse the possible 'Impact on LGBTIQ+ Sri Lankans'. We present 'Ideas for Reforms' drawing from the analysis. Below, we provide a further explanation of these headings.

- **Topics** – the ten Topics analysed here represent aspects critical to human flourishing and include education, health, employment, housing, relationships, the online sphere, media, official documentation, civic issues and entitlements and access to justice. This list of topics is not meant to be exhaustive.
- **Themes** – each topic is further divided into 'themes.' We, the research team, identified these themes collectively and they reference specific critical issues related to that topic.
- **Ideal Setting** – To identify existing 'gaps', we compared Sri Lanka's laws and policies as they are with a 'baseline' ideal standard. Where possible, we derived this standard from international human rights law. In some instances, we adapted them as necessary to the specific context of LGBTIQ+ Sri Lankans.
- **Current Settings in Sri Lanka** – This describes laws, policies and processes, as they stand in relation to each theme, and in certain cases issues surrounding their general implementation.
- **Impact on LGBTIQ+ Sri Lankans** – Here, the 'Current Settings in Sri Lanka' are compared against the 'Ideal Settings', with a focus on the human rights of LGBTIQ+ Sri Lankans. At times, the



'gaps' we identify only affect LGBTIQ+ Sri Lankans; other gaps, affect all Sri Lankans from lower socioeconomic or otherwise vulnerable groups; and the other gaps affect everyone.

- **Ideas for Reform** – This component envisions solutions to the gaps that we identify rather than prescribe specific reforms. The solutions are proposed with a view to improving the quality of the lives of all Sri Lankans.

## Topics in Summary

### Access to Justice

Despite some inadequacies, many areas of law still include general legal protections. These are as relevant to LGBTIQ+ Sri Lankans as to anybody else. For example, employment law prohibits arbitrary termination of employment and Labour Tribunals may review termination on a 'just and equitable' basis. Similarly, landlords are generally prohibited from ejecting tenants without a court order, even when rent payments are in arrears. These are meagre legal protections that exist in law. In assessing the protection afforded by them to LGBTIQ+ Sri Lankans it is essential to understand whether and how they can be accessed. In other words, the lived experiences of those seeking to access these legal guarantees are important for understanding the impact of these laws.

Our analysis under this topic seeks to fulfil that function. The key observations regarding access to justice are not innovative; they highlight persistent problems. However, when we examine them through a 'queer' lens, it is clear that human rights issues, such as the right to access to justice, intersect with other human rights issues. This intersectionality delineates an entry point for LGBTIQ+ rights discourse into 'territories' transcending decriminalisation and constitutional recognition of Sexual Orientation and Gender Identities (SOGI). Weaknesses in access to justice and justice institutions impact the human dignity of all Sri Lankans negatively. However, the stigma and discrimination experienced by vulnerable groups, such as LGBTIQ+ Sri Lankans, act as an additional barrier that prevent their enjoyment of the right to access to justice. The intersectionality of human rights issues therefore result in further injustices taking place outside the courtroom.

### Education

Drawing from the experiences of LGBTIQ+ Sri Lankans in educational institutions in Sri Lanka, our researchers identified six themes which require immediate improvement. They are: admission to educational institutions, access to Sexual and Reproductive Health education, prevention of harassment and bullying, availability of psychosocial support and sensitivity training for teachers. We draw on the recommendations by UNESCO to the education sector on responding to violence based on sexual orientation and gender identity/expression in our description of the Ideal settings.

The analysis of the experiences of LGBTIQ+ individuals in the education setting reveals that both the Ministry of Health and Ministry of Education must re-evaluate existing policies on admission, harassment and availability of reproductive health education. In addition, along with the support of relevant stakeholders in the education sector, the MOH and MOE must invest in sensitivity training for teachers and other administrators in educational institutions to ensure LGBTIQ+ individuals are treated with respect and dignity in their learning environments.

## Employment



Our researchers identified four themes as requiring immediate attention in addressing the challenges experienced by LGBTIQ+ individuals in their world of work namely: discrimination in recruitment/termination/conduct, harassment and violence in the workplace, discrimination of sex workers and denial of employee benefits. In developing the Ideal Settings for this topic, we were guided by the recommendations by the International Labour Organization on ensuring equal rights and benefits for LGBTIQ+ workers in the workplace.

This analysis of the experiences of LGBTIQ+ individuals in the workplace leads to the conclusion that the Department of Labour (DOL) must re-evaluate existing policies on recruitment, employee benefits and harassment in the workplace. In addition, along with the support of relevant stakeholders in the employment sector such as EFC, DOL must invest in sensitivity training for employers to ensure that LGBTIQ+ individuals, including sex workers, are treated with respect and dignity in their work environments.

## Housing



The stigma and discrimination that LGBTIQ+ Sri Lankans face in society endangers their enjoyment of the right to adequate housing. Undue restrictions and surveillance at the family home may deprive them of privacy and a sense of security. They may be subject to domestic violence, especially at the hands of family members. Some of them may also find themselves thrown out of home by family members. On the other hand, some LGBTIQ+ Sri Lankans may wish to leave their family home voluntarily, either to live alone, with friends, or with lovers but by virtue of being LGBTIQ+, they may fail to meet the expectations of a seller of property, prospective landlord or officer administering a housing subsidy or financing scheme. Thus, LGBTIQ+ Sri Lankans seeking access to adequate housing may encounter multiple difficulties that all stem from the stigma and discrimination they face in society due to their sexual orientation and/or gender identity.

The reforms proposed in this section include the strengthening of rent law to protect tenants from arbitrary and discriminatory landlords; regulatory adjustments that may balance the housing stock available in the country with the national housing need; changes to police powers in the context of dispossession of property; ensuring transparency and equity in the context of State land permits and housing subsidies and financing schemes; reforming State land recovery laws to be fairer and more humane.

## Health



This section discusses three themes which the researchers have identified as areas that require immediate improvement in responding to the current experiences of LGBTIQ+ individuals in accessing health care, namely: quality of physical health services, quality of mental health services and quality of SRH services. The Ideal settings have been based on recommendations from a range of appropriate international bodies including the World Health Organization ensuring equal rights and benefits for LGBTIQ+ individuals in healthcare settings. Access to healthcare facilities is a struggle for LGBTIQ+ individuals primarily due to existing stigma and prejudice in society. The heteronormative nature of available services compound the difficulties they encounter when they access different types of health care services in Sri Lanka. In addition, existing stigma and discrimination towards mental health already impact the ability of the general population to access necessary mental health support. This pre-existing stigma makes it even more difficult for LGBTIQ+ individuals to access required services and thereby prevents them from obtaining necessary support and developing coping mechanisms. Similarly, when

accessing reproductive health services, LGBTQ+ individuals have to face prejudice, judgement and discrimination. This is often reinforced by the lack of reproductive education about the LGBTQ+ in the existing education curriculum.

This analysis of the experiences of LGBTQ+ individuals in the healthcare sector leads to the conclusions that the Ministry of Health must re-evaluate existing policies on treatment, patient rights and access to SRH information. In addition, along with the support of relevant stakeholders in the healthcare sector, such as the family health bureau and the directorate of mental health, the Ministry of Health must invest in sensitivity training for healthcare staff to counter implicit biases and ensure LGBTQ+ individuals are treated with dignity and respect in healthcare settings.

## Relationships



As for all people, family is of utmost importance for LGBTQ+ persons, too. But the experience of family for an LGBTQ+ Sri Lankan is made distinct by their own sexual orientation, gender identity and expression, and sex characteristics. Excluding these distinct LGBTQ+ experiences from society's understanding of family creates gaps between how families are seen institutionally and how they exist in reality. In this chapter, we consider some areas relevant to individual rights that are linked to a person's relationship status with another person. They are: living and sharing property with someone; raising children together; being protected from relationship-based violence; being sexually intimate with someone. This is not an exhaustive list of areas relevant under the broad topic of 'Relationships', but looking at them offers a broad enough view of how LGBTQ+ Sri Lankans are impacted by laws that enter private relationships to regulate them through principles, rules, procedures etc.

## Online Sphere



Digital platforms hold particular importance for the LGBTQ+ community as research suggests that LGBTQ+ individuals rely on the digital space for various purposes including forming and maintaining relationships, accessing information about their identity and health as well as engaging in advocacy and awareness. Digital spaces have been more accommodating to many LGBTQ+ individuals than real life to express their thoughts and identities in a safe and controlled manner. However, this increased level of anonymity and autonomy that is available online does not eliminate the increased risk of violence and harassment LGBTQ+ individuals face in Sri Lanka. Individuals of diverse SOGIESC do experience bullying, harassment, exploitation and violence on online platforms as well.

This section deals with three themes which the researchers have identified as areas that require immediate improvement to challenge the current experiences of LGBTQ+ individuals in accessing digital spaces: responses to online hate speech, harassment of human rights defenders and response to image based sexual violence. The Ideal settings have been based on recommendations from a range of appropriate international bodies including the United Nations and the Council of Europe to ensure equal rights and benefits for LGBTQ+ individuals in digital spaces.

This analysis of the experiences of LGBTQ+ individuals in the digital space reveals that the government, with the support of voluntary civilian agencies, must re-evaluate existing policies, laws and procedures relevant to hate speech and other forms of online harassment to ensure LGBTQ+ do not become vulnerable to attack in the digital landscape. In addition, along with the support of relevant stakeholders in the cyber security sector, such as the social media platforms, must invest in sensitivity training for law enforcement to ensure LGBTQ+ individuals are treated with dignity and respect when reporting incidents of online violence.

## Media

Here we consider aspects that require immediate improvement to challenge the current experiences of LGBTIQ+ individuals in creating and consuming media, under three themes, namely: Content censorship, harassment in media and language sensitivity. The Ideal settings have been based on recommendations from a range of appropriate international bodies including the United Nations and GLAAD to ensure equal rights and benefits for LGBTIQ+ individuals in media.

This analysis of the experiences of LGBTIQ+ individuals in the media reveals that entities such as the Sri Lanka Press Council must consistently, actively and transparently engage with the Ministry of Mass Media to re-evaluate and monitor existing policies, laws and procedures relevant to censorship, harassment and sensitivity to ensure they are implemented by media practitioners so that LGBTIQ+ are not portrayed in a degrading and/or subjective manner in media. In addition, along with the support of relevant stakeholders in the mass media sector such as the radio stations, television networks and the press council, the Ministry of Mass Media must invest in sensitivity training for media practitioners to ensure LGBTIQ+ individuals are treated with dignity and respect when reporting incidents related to this community.

## Official Documentation

Where the name and sex of an LGBTIQ+ person does not match their actual name and gender identity (and gender representation) such person is vulnerable to humiliation, discrimination, harassment and the possibility of violence in every instance where official documentation is required. In the absence of mechanisms to obtain official documents reflecting their correct name and gender designation, LGBTIQ+ Sri Lankans face insurmountable hurdles in accessing healthcare, education, employment and other services, in addition to being exposed to violence and other forms of ill treatment and abuse. In effect, without accurate documentation many LGBTIQ+ Sri Lankans are compelled to live their lives in a different plane of socialisation to other Sri Lankans. They avoid situations and services which require or are contingent on official documentation.

In this section, we summarise the junctures at which the right of every person to have their self-defined gender identity legally recognised come into conflict against numerous blocks embedded in the processes of obtaining and amending official documentation in Sri Lanka. Our analysis leads to recommendations on making official documentation processes more accessible, simple and sensitively-delivered for LGBTIQ+ Sri Lankans.

## Civic Issues and Entitlements

In this section, we consider the freedom enjoyed of LGBTIQ+ Sri Lankans in exercising their civic rights and the institutional obstacles that affect them. The civic rights examined here are positive exercises of rights that relate to a person's civic identity and status as a citizen within the state. They are not the negatively defined rights, such as the right to non-discrimination, which permeate many of the other areas examined in this Gap Analysis. These civic rights relate primarily to political participation and association, as well as being able to access general social entitlements from the state.

In general, the failure to include LGBTIQ+ Sri Lankans in how certain political rights are defined and provided for by the state hinders their ability to meaningfully participate in civic life. Social stigma and discrimination against LGBTIQ+ Sri Lankans further prevent them from being able to participate in aspects of civic life that are not administered by the state, as well from being able to access their due civic entitlements. The recommendations here seek to make it easier and more accessible for LGBTIQ+ Sri Lankans to participate enjoy their political freedoms including registration as a voter; access public authorities and their services; and secure their privacy.

## INTRODUCTION

In Sri Lankan comedy cinema, almost every vital, virile male hero has an effeminate, bumbling sidekick whose role it always seems to be to make the hero look more vital and more virile by contrast. The buffoon is almost always knowingly self-effacing, and almost always a bit envious of the hero, who is always muscular, tall, fair, dressed well. The buffoon desires the hero, too, visibly, but accepts the implausibility of his feelings, settling instead for off-beat witticisms and weak-kneed accompaniment everywhere the hero goes. In Sri Lankan comedy cinema, one has never heard of a lesbian.

When LGBTIQ+ Sri Lankans say they face discrimination in their own country, most Sri Lankans do not understand what they mean. Most believe there is no discrimination against LGBTIQ+ Sri Lankans because one rarely hears of a conviction against a homosexual. They all know someone who at least may be gay; most of them have at least seen a rare LGBTIQ+ celebrity or politician in the media, openly acknowledging their identity. They have, at least, seen men acting strangely with each other in a crowded commuter train on a weekday morning. Increasingly, urban, night-time streets are peppered with trans women in miniskirts and lavish heels. They seem to be everywhere, and they seem to be doing all right, insofar as they exist.

This Gap Analysis attempts to bridge this common perception with the reality for LGBTIQ+ Sri Lankans. Like anyone else, LGBTIQ+ Sri Lankans go to school; but they do not experience school the same way as anyone else. They work, but how they experience the workplace is unique to them as LGBTIQ+ Sri Lankans. They all live somewhere, whether it is in their family's home or somewhere they rent alone or with friends. They get sick. They read newspapers. They vote. In all of it, their experience is made distinct by the fact they are LGBTIQ+, not because they are special, but because of the stigma and discrimination they encounter everywhere they go.

The law allows much of this discrimination, even where it prohibits discrimination. This Gap Analysis examines a wide variety of laws and policies in Sri Lanka, deconstructing them to show how LGBTIQ+ Sri Lankans are vulnerable to discrimination in a variety of areas, such as education, healthcare and housing which are essential to everyone. By examining the current settings in Sri Lanka related to these kinds of policy areas, we attempt to reveal the various assumptions, omissions and intentional exclusions found in our laws and policies, and explain how they leave LGBTIQ+ Sri Lankans behind.

As most Sri Lankans seemed to endorse recently in a popular political slogan, all Sri Lankans are entitled to 'one country, one law.' Our Gap Analysis intends to show the stark differences in how Sri Lankan laws are experienced by sections of society who live in its margins, like LGBTIQ+ Sri Lankans. Laws and policies are often couched in general, neutral terms, but their various ambiguities and the broad discretions afforded to authorities almost always become trapdoors many LGBTIQ+ Sri Lankans fall through. Depending on who you are, and what is important to you, Sri Lanka has always been 'one country, but many arbitrary laws'.

Yet, even as we set out to look for these legal trapdoors, which we thought of as 'gaps' while compiling this analysis, there was no way to essentialise an 'average' LGBTIQ+ Sri Lankan. Indeed, the abbreviation itself refers to multiple categories of people, and each individual falling under one of those categories may also have a number of other categories to their names: they may also be Burgher, Sinhala, Muslim or Tamil; they may also be Buddhist, Christian Hindu, Islamic or non-religious; they may belong to various castes or have no known caste; they may be wealthy, they may be poor; they may also have disabilities. It is difficult to comprehensively address all these intersections. However, in the main, we

focus on LGBTIQ+ Sri Lankans generally of lower socioeconomic backgrounds, regardless of whatever other backgrounds they may come from.

It is important to note that the laws we critique in this Gap Analysis do not discriminate only against LGBTIQ+ Sri Lankans. In fact, many of our criticisms may apply in the context of other social groups too, or to all Sri Lankans generally, especially as far as any of them are considered 'poor'. The law, as much as it assumes cis-heterosexuality, also assumes wealth; where a person is not wealthy, they fall in trouble. In the case of LGBTIQ+ Sri Lankans, they are often neither wealthy nor heterosexual/cis. Sometimes, however, they are not wealthy because they are not heterosexual/cis—their education may have been disrupted by bullying in schools; their unemployment may be caused by prejudiced employers refusing to hire them; their poor physical or mental health maybe linked to traumas and other root causes stemming from the hate they face in society. On the other hand, there are LGBTIQ+ Sri Lankans who may, being wealthy, live entire lives insulated from the ill-effects of at least some of the laws we critique in this analysis.

We have strived to be as fair as possible to this socioeconomic reality in the suggestions we make as 'ideas for reform'. Even as we look for the LGBTIQ+ gaps, we are ever mindful that the areas of law we examine are important to all Sri Lankans, and it would defeat our purpose to suggest reforms that benefit only LGBTIQ+ Sri Lankans ignoring the crises all other Sri Lankans suffer under the same oppressive laws.

We intend this Gap Analysis to be a resource for all Sri Lankans in understanding how LGBTIQ+ Sri Lankans are not able to enjoy the rights, protections, and services they are entitled to at the same level as all other Sri Lankans, including the obstacles they encounter in enjoying those rights. Finally, we intend this document to be a resource for lawmakers, policymakers, public authorities and community leaders. We hope that this Gap Analysis will be useful to them in considering legal, policy and administrative changes. Such reforms would improve the lives of all Sri Lankans, regardless of their sexual orientations and gender identities.

## METHODOLOGY

Three researchers with experience in the field of human rights of LGBTIQ+ undertook this Gap Analysis with the following objective:

*“To prepare a gap analysis report that outlines the human rights principles, norms and standards in achieving equality and inclusion for LGBTIQ+ communities, identifies and critically examines the discriminatory legal provisions, policies, and processes in the existing system and to identify potential solutions to reduce or bridge the gap including actionable recommendations and relevant authorities.”*

### Setting the parameters

The research for this ‘gap analysis’ was carried out November 2020 through January 2021. Though it was termed as such, no specific definition framed the researchers’ reference to a ‘gap analysis.’ However, it eventually became a term that evoked a sense of what the final product could look like. We relied on our initial conversations to develop the idea of a ‘gap analysis’, to consider and identify its constituting parts, and to map out a work plan.

We decided on a structure to guide our desk review and analysis. Accordingly, we organised this Analysis under specific topics. We sub-divided each topic under a number of relevant themes. Each theme included a description of an ‘Ideal setting’ or a few of them as relevant to each theme. Against these Ideal settings, we examined the applicable ‘Current settings in Sri Lanka.’ We then extrapolate from the analysis the possible ‘Impact on LGBTIQ+ Sri Lankans’. We present ‘Ideas for Reforms’ on the basis of that analysis.

- **Topics** – We have organised the Gap Analysis under ten topics. These topics reflect the highest levels of abstraction through which we entered our study, as representing sectors that are critical for human wellbeing: education, health, employment, housing, relationships, the online sphere, media, official documentation, civic issues and entitlements and access to justice. This is not an exhaustive list but were identified based on significance and the availability of resources. We assigned the topics among the three researchers, and each researcher populated all the other components of each topic assigned to them. Some topics were assigned based on individual preference; others based on necessity.
- **Themes** – Each topic was further divided into ‘themes’, referencing some specific issues related to that topic. These were produced through a brainstorming exercise in the research team. In covering a specific topic, we were conscious of the need to be as comprehensive as possible, even though we were aware that it was impossible to be exhaustive. The list of themes we identified at the stage of our initial conversations remained dynamic. They signposted our desk review as we explored the literature relevant to each topic; but they were never themselves static. The end-result as published reflects how the idea of ‘themes’ evolved among the researchers as the desk reviews progressed.

- **Ideal Setting** – The ideal setting for each theme was based on our desk review of that theme. Where possible it is derived from international human rights standards, especially following how treaty bodies have developed relevant human rights over time. Domestic standards, if they existed were avoided, to not beggar the question in analysis; they were considered in the next component, ‘Current settings in Sri Lanka.’ In adopting international standards, we further adapt them to fit the LGBTIQ-specific context. We only considered the most relevant standards, leaving out others even if they were not irrelevant. Where no clear international standard were readily identifiable, the researchers themselves defined, in the broadest possible terms, the ideal setting relevant to a theme. We determined these ideal standards at the level of abstraction applicable to all people including LGBTIQ+ Sri Lankans. Sometimes, a given theme could have more than one ‘Ideal Setting’ to consider.
- **Current Settings in Sri Lanka** – This component reflects the larger portion of our findings from the desk review. It describes laws, policies and processes as they stand, and sometimes issues surrounding general implementation. The relevant material of this component is included based on its relationship to the Ideal Setting described in the previous column. It is by no means an exhaustive survey of all the laws etc. relevant to the theme; we covered as many areas as possible within the time constraints of the project.
- **Impact on LGBTIQ+ Sri Lankans** – In this component, we compare the ‘Current Settings in Sri Lanka’ against the ‘Ideal Settings’, with a particular focus on the human rights of LGBTIQ+ Sri Lankans. At times, the gaps we identified only affect LGBTIQ+ Sri Lankans, while in others, the gaps generally affect all Sri Lankans from lower socioeconomic backgrounds or otherwise vulnerable groups, including LGBTIQ+ Sri Lankans. In some cases, the gaps affect everyone. In relating the settings to LGBTIQ+ Sri Lankans, as researchers and volunteers working within the LGBTIQ+ activist spaces in Sri Lanka, we rely on our own experiences and memories, as well as those shared within our communities. In being sensitive to these nuances, we navigate through the idea of ‘intersectionality.’
- **Ideas for reform** – This component attempts to envision solutions to the gaps that we identify more than to prescribe specific reforms. These proposals are also informed by our exposure to the various administrative machineries in the course of our work and in our personal lives, and envision possibilities for thinking those institutions anew. They may lack a technical dimension in some policy areas; and in others they may raise concerns about the availability of public resources. They will not represent all the diverse views of all LGBTIQ+ Sri Lankans. Rather our intention is to trigger debate, to initiate a discourse within the general population on the many parallels between “LGBTIQ+ reforms” and reforms benefiting every Sri Lankan. An assumption running through all the Ideas for reforms is that any changes in the relevant area of law or policy will always follow robust, consultative engagement with all relevant groups, including all vulnerable groups, including LGBTIQ+ Sri Lankans.

## Qualifying Considerations

- This Gap Analysis was produced within two months as a first draft. The time available shaped and limited the scope of the analysis. Stemming from the time constraints as well as the prevailing COVID19 pandemic situation in Sri Lanka, we were unable to follow a consultative approach. Our main source of information was the desk review conducted in the run-up to the drafting of the document.



- Where necessary, we relied on our own knowledge and experiences, especially in explaining the gaps in relation to the Impact on LGBTIQ+ Sri Lankans. Our diverse disciplinary backgrounds (psychology; political science; law) have informed and enriched the information included and analysis presented here.
- The analysis is peppered with abbreviations and acronyms. In consideration of length, they are not expanded within the main body. However, a glossary of all abbreviations and acronyms found in the document are presented at the beginning, for the reader's easy reference.
- We, the researchers are all self-identified members of the LGBTIQ+ community. We come from different academic backgrounds (psychology; political science; law) and professional backgrounds (in the public, private and civil society sectors). This shapes the presentation of the material in this analysis.
- The Gap Analysis flags 'Ideas for reform' directed at various stakeholders and actors, including LGBTIQ+ community organisations. As mentioned before, these Ideas are not meant to prescribe solutions, but to stimulate conversations in relevant directions. Insofar as they may apply to LGBTIQ+ community organisations, we recognise the limited resources with which existing community organisations work. As such, the Ideas are not meant to shift burdens of responsibility (from the state to those organisations), but to indicate the specific role that such organisations may play within the broader idea of "civil society". Naturally, the availability of resources is assumed for the sake of the proposition. How available resources are acquired and managed to serve the needs of the community is part of the conversation we hope to instigate.
- A Reference Group of LGBTIQ+ activists as well as broader human rights activists working in Sri Lanka reviewed and commented on this analysis. It has also been reviewed by a senior lecturer of human rights law of the University of Colombo.

## EDUCATION



Lack of access to accurate and objective information is one of the primary contributors for stigma and discrimination towards the LGBTIQ+ individuals in Sri Lanka. Since sexual and reproductive health is only covered in the national curriculum at a minimal level, it is not surprising that research from the National Health Bureau suggests that nearly 50% of youth are unaware of how to maintain and manage their sexual well-being.<sup>1</sup>

However, we were unable to ascertain the level of awareness among LGBTIQ+ individuals of their sexual health due to the absence of research studies on this topic. More importantly, sexual and emotional health of LGBTIQ+ individuals are hardly mentioned in the local curriculum at all. This absence of crucial information, especially delivered through an objective and consistent classroom-based approach, makes LGBTIQ+ more vulnerable to violence and discrimination. The culture of silence and ignorance further reinforces the stigmatisation and shaming of the members of the LGBTIQ+ community.

Prevailing misinformation and reinforcement of stereotypes in society increase harassment, mistreatment and violence towards LGBTIQ+ individuals in educational settings. Neither the law nor social norms attempt to acknowledge the bullying and harassment faced by LGBTIQ+ individuals in their learning environments. The refusal to openly discuss the prevalence of this issue, as well as the lack of specific, efficient and effective response mechanisms, further place LGBTIQ+ individuals in danger.

According to the Universal Declaration of Human Rights, every individual has the right to education. Every individual also has the right to not be subjected to inhuman and degrading treatment.<sup>2</sup> A student in Sri Lanka on average spends a third of the day in their educational environment. Therefore, it is important that this environment is safe, accessible and productive as any other – especially for LGBTIQ+ individuals. Hence, the purpose of this section is to highlight the key concerns relevant to LGBTIQ+ individuals in various educational settings.

This section examines six themes which we have identified as areas that require immediate improvement to challenge the current experiences of LGBTIQ+ individuals in educational institutions in Sri Lanka namely: admission to educational institutions, access to sexual and reproductive health (SRH) education, prevention of harassment and bullying, availability of psychosocial support and sensitivity training for teachers. The Ideal Settings are based on the UNESCO recommendations regarding the education sector's responses to violence based on sexual orientation and gender identity/expression.

This analysis of the experiences of LGBTIQ+ individuals in the education setting reveals that both the Ministry of Health and Ministry of Education must re-evaluate existing policies on admission, harassment and availability of reproductive health education. In addition, along with the support of relevant stakeholders in the education sector, the MOH and the MOE must invest in sensitivity training for teachers and other administrators in educational institutions to ensure that LGBTIQ+ individuals are treated with respect and dignity in their learning environments. Furthermore, while focusing on training, it is also vital that MOE simultaneously develops a comprehensive policy framework that is applicable to students, staff as well as parents to eradicate unfair practices from primary to higher education.

1 Family Health Bureau. (2015). National Youth Survey 2012-2013, available at: [http://www.fhb.health.gov.lk/images/FHB\\_resources](http://www.fhb.health.gov.lk/images/FHB_resources)

2 United Nations. (1948). Universal Declaration of Human Rights, available at: [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Admission of LGBTIQ+ individuals or children of LGBTIQ+ individuals to educational institutions</b>			
<p>Equal access to education with non-discrimination, with higher education being accessible based on merit.<sup>3</sup></p>	<p>The Constitution states that all persons have universal and equal access to education at all levels.<sup>4</sup></p> <p>Different aspects of the right to education, including fairness in admission policy and procedures, have been recognised by the Supreme Court as protected in the Constitution.</p> <p>There is a long and well-established political culture and tradition of welfare through which education is recognised as a core obligation of the state.</p>	<p>Despite the constitutional assurance, social stigma can prevent LGBTIQ+ individuals and/or their children from entering an educational institution due to discriminatory admission procedures.</p> <p>In particular, the need for certain documents such as the national identity card, birth certificate and marriage certificate can place LGBTIQ+ individuals in a vulnerable position during the application process.</p> <p>Admission procedures do not explicitly discriminate against LGBTIQ+ individuals. But existing legal frameworks such as the Education Ordinance and logistical procedures are often heteronormative in nature – which restricts LGTBIQ+ individuals from accessing educational institutions. Application forms require details of ‘father’ and ‘mother’ of the applicant. These criteria assume a child has two parents in a heterosexual relationship.</p>	<ul style="list-style-type: none"> <li>• The Ministry of Education (MOE) must implement consistent and objective monitoring to ensure that primary, secondary, higher and vocational education institutions adhere to the Constitution and practice non-discrimination in public and private admission policies.</li> <li>• MOE must re examine the admission documentation requirements in elementary and secondary education levels and eliminate documentation criteria (such as parents’ marriage certificates) that can discriminate against LGBTIQ+ individuals.</li> <li>• University Grants Commission must address and accommodate documentational challenges faced by transgender applicants in order to prevent unfair discrimination and rejection during university application processes.</li> </ul>

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3 United Nations. (1948). Universal Declaration of Human Rights, available at: [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf) ICESCR 13-14, General Comment 13. (1999). <https://www.refworld.org/pdfid/4538838c22.pdf>

4 Constitution of Sri Lanka, Article 27(2)(h).

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Admission of LGBTIQ+ individuals or children of LGBTIQ+ individuals to educational institutions</b>			
		<p>Some school admissions also strictly require the parents to be married and demand the copy of a marriage certificate. This discriminates against children of LGBTIQ+ individuals to whom marriage is generally inaccessible in Sri Lanka.</p> <p>In addition, in order to enrol at higher education institutions, national identity documents are required. This raises challenges for transgender individuals whose identity documentation might not reflect their identity accurately and thereby result in discrimination or rejection during admission procedures.</p>	

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Access to accurate information on SOGIESC through the local education curriculum</b>			
<p>Implementation of accurate and age-appropriate comprehensive sexuality education curricula to promote health, wellbeing, respect for human rights and gender equality.<sup>5</sup></p>	<p>Information on sexual and reproductive health is primarily provided through the local health and physical education curriculum and vocational training through National STD/AIDS Control Programme (NSACP) and Family Planning Association (FPA).</p> <p>Ensuring access to sexual and reproductive health education and services is included as a strategic direction in the adolescent and youth health strategic plan for 2018-2025.<sup>6</sup></p> <p>The National Plan to Address sexual and gender based violence (SGBV) in Sri Lanka (2016-2020) identifies the need to strengthen life skills and competencies of students to understand and counter SGBV.<sup>7</sup></p> <p>As per the UN Convention on the Rights of Children, ratified by Sri Lanka in 1991, the government has recognised the need for educational interventions to protect children from all forms of violence and abuse.<sup>8</sup></p>	<p>The existing syllabus does not address the sexual and reproductive health of LGBTIQ+ individuals. The curriculum is exclusively heteronormative, focusing primarily on reproduction, pregnancy and childbearing. Moreover, chapters on HIV/AIDS and STIs completely ignore safety practices for LGBTIQ+ individuals.<sup>9</sup></p> <p>In practice, the teaching of the curriculum is influenced by the biases and beliefs of the teacher and thereby is neither objective nor accurate. Delivery is heavily gendered since topics such as 'menstruation' are only taught to female students while topics such as 'ejaculation' are only taught to male students. This is a binary approach to health education that intensifies the gender divide while also overlooking the needs of transgender students.</p> <p>Vocational training conducted by NSACP, FPA and private entities</p>	<ul style="list-style-type: none"> <li>• MOE must review and rewrite existing health and physical education curricula to ensure that SRH education is comprehensive and does not exclude LGBTIQ+ individuals. In addition, MOE must identify appropriate entry points in the education system to help students understand issues related to SOGIESC in a culturally sensitive and age-appropriate manner. For example, apart from science and health, other subjects such as citizenship education, literature and history can be used to initiate discussions on gender and sexuality.</li> <li>• MOE must ensure training of health and physical education teachers include a compulsory provision on addressing the importance of non-heteronormative SRH education delivery. This would ensure both curricula and delivery are evidence-based and eliminate inaccurate and stigmatising content in learning environments.</li> </ul>

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5 UNESCO, (2018). International Technical Guidance on Sexuality Education: An Evidence Informed Approach, available at: <https://www.unfpa.org/publications/international-technical-guidance-sexuality-education> ESCR, General Comment on Health (2000), available at: <https://www.refworld.org/pdfid/4538838d0.pdf>

6 Ministry of Health, National Strategic Plan on Adolescent and Youth Health 2018-2025, available at: <http://yowunpiyasa.lk/images/Guidelines/sp/SP.pdf>

7 Ministry of Women and Child Affairs. (2016). Policy Framework and National Plan of Action to Address SGBV in Sri Lanka 2016-2020, available at: <http://gbvforum.lk/r-library/document/SGBV%20National%20Action%20Plan.pdf>

8 United Nations. (1990). Convention on the Rights of the Child, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

9 National Institute of Education. (2016). Health and Physical Education Teacher's Guide: Grade 11, available at: <http://www.nie.lk/pdffiles/tg/e11tim155.pdf>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Access to accurate information on SOGIESC through the local education curriculum</b>			
		<p>are unable to address SRH concerns of LGBTIQ+ students due to restrictions from school administrations and social stigma. The lack of information about the health and safety of LGBTIQ+ individuals in the health and physical education curriculum prevents these individuals from accessing information about their bodies in the local languages. The heteronormative nature of the curricula can further reinforce negative and patriarchal stereotypes among young people as well as educators.</p> <p>Absence of information on consent, safety, pleasure and hygiene can make LGBTIQ+ individuals vulnerable towards STIs and sexual violence. The biased and judgmental delivery of information can further reinforce self-stigma and strengthen gender roles while this unmonitored distribution of misinformation can exacerbate discrimination towards LGBTIQ+ individuals.</p>	<ul style="list-style-type: none"> <li>• Ministry of Health (MOH) must practice non-discrimination by periodically reviewing future policy frameworks to ensure adolescent and youth health address SRH concerns of LGBTIQ+ youth.</li> <li>• MOH must re-evaluate and restructure existing SRH vocational training for students to ensure they are inclusive of LGBTIQ+ concerns.</li> </ul>

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Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Access to accurate information on SOGIESC through the local education curriculum</b>			
		The exclusion of LGBTIQ+ individuals in national policy frameworks for adolescent and youth health further reinforces the failure of educational institutions to address SRH of LGBTIQ+ students. In addition, the lack of national level research on the needs and challenges of LGBTIQ+ individuals with regard to their sexual health makes it difficult for policy makers and defenders of LGBTIQ+ rights to identify critical concerns and develop solutions.	

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Prevention of bullying and harassment based on sexual orientation and gender identities in educational institutions</b>			
Establishment of national and school level policies to prevent and address violence in education settings, including violence based on SOGIESC. <sup>10</sup>	Section 308 of the Penal Code criminalises cruelty to children. <sup>11</sup>  As per UN Convention on the Rights of Children, ratified by Sri Lanka in 1991, the government has recognised the need to take appropriate measures to ensure	Section 308 of the penal code criminalises cruelty to children. However, corporal punishment is still prevalent in many educational institutions. <sup>12</sup>  The PHI guide on school health does not mention prevention of abuse and bullying faced by LGBTIQ+	<ul style="list-style-type: none"> <li>The government must revise section 308 of the Penal Code and the Ragging Act to accommodate inclusive definitions of bullying and harassment, especially highlighting the verbal, emotional and physical violence that may also be experienced by</li> </ul>

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<sup>10</sup> UNESCO. (2016). Out in the open: Education Sector Responses to Violence based on Sexual Orientation and Gender Identity/Expression, available at: <https://www.right-to-education.org/resource/out-open-education-sector-responses-violence-based-sexual-orientation-and-gender>

<sup>11</sup> Penal Code of Sri Lanka Ordinance, No 2 of 1883, s 308 [hereinafter, SLPC].

<sup>12</sup> Children Protection. (2017). A Study on Child Disciplinary Methods Practiced in Schools in Sri Lanka, available at: <http://www.childprotection.gov.lk/documents/24.1.2018%20Disciplinary%20Methods%20final%20report%2006-07-2017.pdf>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Prevention of bullying and harassment based on sexual orientation and gender identities in educational institutions</b>			
	<p>that school discipline is administered in a manner consistent with the child's human dignity.<sup>13</sup></p> <p>The School Health Programme in the PHI guide<sup>14</sup> states that the PHI is responsible for assisting schools to develop and implement health promoting policies for the prevention of mental and physical abuse, bullying against children and prevention of trauma.</p> <p>Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act declares ragging as a punishable offense and demands the elimination of ragging and other forms of violent, cruel, inhuman and degrading treatment from educational institutions.<sup>15</sup></p>	<p>students. The failure to address the particular vulnerability of LGBTIQ+ individuals and the absence of clear provisions pertaining to the bullying of LGBTIQ+ students, educators and staff in educational institutions puts these individuals at further risk.</p> <p>Despite the Ragging Act, acts of homophobic violence and harassment experienced by university students have been reported and recorded.<sup>16</sup> By overlooking bullying and harassment faced by individuals of diverse SOGIESC when defining and drafting anti-bullying and anti-ragging policies for educational institutions, the likelihood of such incidents being ignored is further reinforced.</p>	<ul style="list-style-type: none"> <li>• The government must revise section 308 of the Penal Code and the Ragging Act to accommodate inclusive definitions of bullying and harassment, especially highlighting the verbal, emotional and physical violence that may also be experienced by individuals of diverse SOGIESC.</li> <li>• MOE must systematically monitor and record the prevalence and manifestations of violence in educational settings, including violence based on SOGIESC.</li> <li>• PHIs should assist schools to develop policies against bullying which directly address harassment against LGBTIQ+ students – including the prohibition of slurs and other forms of verbal and emotional harassment. In addition, to ensure efficient implementation of above, PHIs must also be offered mandatory and consistent training and localised resources.</li> </ul>

13 United Nations. (1990). Convention on the Rights of the Child, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> Colombo Page. (2021). [http://www.colombopage.com/archive\\_21A/Feb12\\_1613154152CH.php](http://www.colombopage.com/archive_21A/Feb12_1613154152CH.php)

14 Ministry of Health Sri Lanka. (2010). Manual for the Sri Lanka Public Health Inspector: Chapter 9 – School Health Programme, available at: <https://medicine.kln.ac.lk/depts/publichealth/>

15 Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act, No. 20 of 1998, available at: [https://eugc.ac.lk/rag/downloads/Act\\_No\\_20\\_EN.pdf](https://eugc.ac.lk/rag/downloads/Act_No_20_EN.pdf)

16 Counterpoint. (2018). Preventing Sexual and Gender Based Violence at Universities, available at: <http://counterpoint.lk/preventing-sexual-and-gender-based-violence-at-universities/>



Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTQ+ Persons	Ideas for Reform
<b>Response mechanisms to bullying and harassment based on sexual orientation and gender identities in educational institutions.</b>			
<p>Implementation of efficient, effective and non-judgmental interventions to respond to violence within the education sector, including violence based on SOGIESC.<sup>17</sup></p>	<p>Ministry of Education implements educational interventions to combat violence within educational institutions. This includes the existing anti-bullying messaging in the local education curriculum.<sup>18</sup></p> <p>University Grants Commission offers a 24-hour hotline, an online complaint portal and an emergency safety app to aid victims of ragging in universities and other higher education institutes.<sup>19</sup></p>	<p>The existing curriculum does not mention bullying of LGBTQ+ individuals, but states that students must be encouraged to show empathy towards people with “weaknesses”.</p> <p>It is unclear whether individuals who respond to incidents of ragging and harassment have received the necessary sensitivity training to handle cases of bullying and harassment faced by individuals of diverse SOGIESC in the educational setting.</p> <p>In addition, LGBTQ+ individuals and the bullying and harassment they might face in educational settings is not explicitly mentioned in any existing local response mechanisms. This exclusion can lead to LGBTQ+ individuals failing to identify any mistreatment based on their SOGIESC as abuse and harassment.</p>	<ul style="list-style-type: none"> <li>• National Institute of Education must expand on its existing material on bullying, specifically highlighting the possibility of individuals being bullied on the basis of gender identity and sexual orientation.</li> <li>• University Grants Commission must provide training and support to individuals responsible for addressing ragging and harassment in higher education institutions to ensure they handle complaints from LGBTQ+ individuals with sensitivity.</li> </ul>

17 UNESCO. [2016]. Out in the open: Education Sector Responses to Violence based on Sexual Orientation and Gender Identity/Expression, available at: <https://www.right-to-education.org/resource/out-open-education-sector-responses-violence-based-sexual-orientation-and-gender>

18 National Institute of Education Sri Lanka. [2017]. Health and Physical Education Teacher’s Guide: Grade 8, available at: [http://www.nie.lk/pdf/files/tg/Health\\_TG\\_Gr\\_8\\_English\\_new.pdf](http://www.nie.lk/pdf/files/tg/Health_TG_Gr_8_English_new.pdf)

19 Ragging Complaints Portal of University Grants Commission, available at: <https://eugc.ac.lk/rag/>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Availability of psychosocial support for LGBTIQ+ individuals in educational institutions</b>			
<p>Provide access for LGBTIQ+ individuals to non-judgmental psychosocial support delivered by trained staff with professional counselling skills.<sup>20</sup></p>	<p>Under the Family Health Bureau, the School Health Unit and Adolescent and Youth Health Unit are responsible for ensuring the mental health of the youth – including in educational environments.<sup>21</sup></p> <p>During school medical examinations, PHI is required to inform students about existing psychosocial support available.<sup>22</sup></p> <p>The National Policy Framework on General Education (2003) reported that the school system and guidance and counselling teachers should support the students to cope with “personal problems, emotional stress and instability” caused by a wide range of factors.<sup>23</sup></p> <p>The Mental Health Policy of Sri Lanka states that implementation of the national policy</p>	<p>Local policies and institutions responsible for the mental health of youth do not explicitly address the need to provide support for LGBTIQ+ youth in a psychosocial capacity. The guides and frameworks developed to address mental health concerns of youth, such as the National Policy Framework on General Education, do not include issues and stress caused by one’s gender identity, expression and sexual orientation. Meanwhile, local organisations that offer support to LGBTIQ+ individuals are not included in the existing recommendations.</p> <p>As the psychosocial needs of LGBTIQ+ youth are not included in a developmental, executional or assessment capacity, specific mental health needs and support systems required by this demographic cannot be identified or implemented.</p>	<ul style="list-style-type: none"> <li>• MOH must conduct comprehensive training for PHI and relevant stakeholders from education institutions on delivering information to students regarding mental health concerns related to gender identity, expression and sexual orientation. This must be implemented through a participatory approach that will encourage these individuals to reflect on their values and attitudes.</li> <li>• MOE, along with the MOH, must ensure that training and resources developed for career guidance teachers and counsellors include material on how to respond to issues of LGBTIQ+ individuals – including dealing with stigma and discrimination – in order to equip LGBTIQ+ individuals with necessary skills and coping mechanisms.</li> </ul>

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20 UNESCO. (2016). Out in the open: Education Sector Responses to Violence based on Sexual Orientation and Gender Identity/Expression, available at: <https://www.right-to-education.org/resource/out-open-education-sector-responses-violence-based-sexual-orientation-and-gender>

21 Family Health Bureau Sri Lanka, available at: <https://fhb.health.gov.lk/index.php/si/>

22 Ministry of Health Sri Lanka. (2010). Manual for the Sri Lanka Public Health Inspector: Chapter 13 – Mental Health, available at: <https://medicine.kln.ac.lk/depts/publichealth/>

23 National Education Commission. (2014). Study on Career Guidance in General Education in Sri Lanka, available at: <http://nec.gov.lk/wp-content/uploads/2016/04/8-Final-2.pdf>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Availability of psychosocial support for LGBTIQ+ individuals in educational institutions</b>			
	<p>will be administered by a council – which includes members from the Education Ministry.<sup>24</sup></p>	<p>School medical examinations allow consistent and monitorable opportunities for dissemination of information regarding existing psychosocial services for LGBTIQ+ individuals. However, failure to include these services in current recommendations further prevents LGBTIQ+ individuals in need from accessing psychosocial support and helpful mental health resources.</p> <p>Furthermore, national resources developed for counsellors, career guidance teachers and other relevant professionals do not hold the individuals accountable for providing support for LGBTIQ+ individuals and their issues. This might lead to these professionals refusing to provide counselling services to LGBTIQ+ individuals in need as it is not mentioned in their job description.</p>	<ul style="list-style-type: none"> <li>• MOH must ensure all mental health policies pertaining adolescents and educational institutions are exhaustive and inclusive – especially addressing mental health services available for individuals with concerns regarding SOGIE.</li> </ul>

24 The Mental Health Policy of Sri Lanka. (2015) , available at: [http://www.health.gov.lk/moh\\_final/english/public/elfinder/files/publications/publishpolicy/7\\_Mental%20Health.pdf](http://www.health.gov.lk/moh_final/english/public/elfinder/files/publications/publishpolicy/7_Mental%20Health.pdf)

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Training and support for educators and staff to approach LGBTIQ+ students and their issues with sensitivity</b>			
<p>Provide teachers with pre-service and in-service training to deliver content related to sexual orientation and gender identity in the curriculum, ideally through a participatory approach to training that enables teachers to reflect on their values, attitudes, language and behaviours.<sup>25</sup></p>	<p>The Policy Framework and National Action Plan to Address SGBV in Sri Lanka (2016-2020) recognises the need for capacity building of principles, education officers and teachers on gender and SGBV issues.<sup>26</sup></p>	<p>Trainings designed for teacher development do not include modules to practice sensitivity towards LGBTIQ+ students and barely discusses topics such as gender and gender roles.<sup>27</sup> In addition, training guidelines mentioned under the national training and development plan for educators primarily focuses on subjects such as mathematics, science, English and Information and Communication Technology (ICT) and explicitly mentions that all training must prioritise to orient education to meet the needs of the economy.<sup>28</sup></p> <p>The lack of training and resources on LGBTIQ+ sensitivity among educators increase the challenges in implementing objective and accurate information delivery regarding sexual orientation, gender identity and relationships.</p>	<ul style="list-style-type: none"> <li>• MOE must ensure all teacher training, irrespective of subject and grade, include discussions on gender for educators to understand the linkages within the education system. Furthermore, the input of parents must be taken into consideration when developing gender sensitive training materials and strategies for educators to ensure both stakeholders are on the same page.</li> <li>• MOE must ensure the national training strategy will identify subjects such as health and physical education as a crucial part of the education curricula. The physical, emotional and sexual health of the citizens, including LGBTIQ+ individuals, is a key contributor to a strong economy. In addition, training for educators must be consistently evaluated and monitored to measure its impact and effect.</li> </ul>

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25 UNESCO. (2016). Out in the open: Education Sector Responses to Violence based on Sexual Orientation and Gender Identity/Expression, available at: <https://www.right-to-education.org/resource/out-open-education-sector-responses-violence-based-sexual-orientation-and-gender>

26 Ministry of Women and Child Affairs. (2016). The Policy Framework and National Action Plan to Address SGBV in Sri Lanka (2016-2020), available at: <http://gbvforum.lk/r-library/document/SGBV%20National%20Action%20Plan.pdf>

27 National Education Commission. (2014). Study on Professional Development of Teachers and Teacher Educators in Sri Lanka, available at: <http://nec.gov.lk/wp-content/uploads/2016/04/2-Final-.pdf>

28 Ministry of Education. Training and Development Plan 2017-2018, available at: <https://moe.gov.lk/wp-content/uploads/2020/06/TRAINING-AND-DEVELOPMENT-PLAN-2017-2018.pdf>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTQ+ Persons	Ideas for Reform
<b>Training and support for educators and staff to approach LGBTQ+ students and their issues with sensitivity</b>			
		<p>The failure to include and discuss gender norms and stereotypes at the least makes it incredibly difficult to initiate or cultivate conversations about gender and sexuality at a basic level in educational institutions.</p> <p>The focus of the national training plan on mainstream subjects and its disregard towards subjects such as health and physical education, civics and language make it further challenging to advocate for the changes in the curricula to make it more LGBTQ+ inclusive.</p>	<ul style="list-style-type: none"> <li>• MOE must set exhaustive and inclusive training goals for stakeholders in the education sector to address SGBV – including violence faced by LGBTQ+ students. In environments where it is difficult to initiate or engage in discussions on sexuality and gender diversity the MOE must encourage educators to address alternative topics of discussion that are still relevant. For example, at a basic level, definitions of masculinity and femininity and the harmful impact of gender roles and stereotypes must be discussed in educational settings.</li> </ul>



Access to healthcare facilities has been a struggle for LGBTIQ+ individuals primarily due to existing stigma and prejudice in society. When coupled with the heteronormative nature of available services, they face several challenges in accessing different types of health care services in Sri Lanka.

In terms of access to mental health services, stigma and discrimination towards LGBTIQ+ individuals not only prevent them from accessing required services but makes it harder for them to cope with everyday stressors. LGBTIQ+ individuals who have mental health issues experience double stigma since they do not feel accepted neither by the LGBTIQ+ community nor by the mental health community.

Similarly, when accessing reproductive health services, LGBTIQ+ individuals face prejudice, judgement and discrimination – which is often reinforced by the lack of reproductive education about the LGBTIQ+ in the existing education curriculum. Furthermore, training centres and educational institutions for health practitioners do provide training or education about the health requirements and challenges faced by the LGBTIQ+ community. This lack of training and sensitisation often leaves health professionals completely unprepared and unsuitable for providing health services to LGBTIQ+ individuals.

In addition, existing stigma and discrimination towards mental health already impact the ability of the general population to access necessary mental health support. This pre-existing stigma makes it even more difficult for LGBTIQ+ individuals to access required services and thereby prevents them from obtaining necessary support and coping mechanisms. Similarly, when accessing reproductive health services, LGBTIQ+ individuals face prejudice, judgement and discrimination – which is often reinforced by the lack of education about reproductive health as it relates to the LGBTIQ+ in the existing education curriculum.

This section deals with three themes which the researchers have identified as areas that require immediate improvement to the current experiences of LGBTIQ+ individuals in accessing healthcare namely: quality of services in hospitals, quality of mental health services and quality of SRH services. The Ideal Settings have been based on recommendations from a range of appropriate international bodies including the World Health Organisation on ensuring equal rights and benefits for LGBTIQ+ individuals in healthcare settings.

This analysis of the experiences of LGBTIQ+ individuals in the healthcare sector reveals that the Ministry of Health must re-evaluate existing policies on treatment, patient rights and access to SRH information. In addition, along with the support of relevant stakeholders in the healthcare sector such as the Family Health Bureau and the Directorate of Mental Health, MOH must invest in sensitivity training for healthcare staff to ensure LGBTIQ+ individuals are treated with dignity and respect in healthcare settings.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTQ+ Persons	Ideas for Reform
<b>Quality of physical health services available for LGBTQ+ individuals</b>			
<p>The right to access healthcare should not be subject to any form of discrimination, including discrimination based on sexual orientation, gender identity or expression, or sex characteristics.<sup>29</sup></p> <p>Individuals who experience gender dysphoria are able to receive the gender reassignment hormone therapies and surgeries essential and medically necessary to alleviate their gender dysphoria in an accessible and sensitively-delivered manner.<sup>30</sup></p>	<p>Guidelines on ethical conduct for medical and dental practitioners compiled by the Ethics Committee of the Sri Lanka Medical Council apply to all doctors at the time of registration.<sup>31</sup></p> <p>A similar Code exists for nurses as compiled by the Nursing Council of Sri Lanka.</p> <p>There are no national level policies or guidelines on gender hormone therapies and surgeries.</p>	<p>LGBTQ+ individuals may experience discrimination based on their sexual orientation, gender identity or expression, or sex characteristics by medical practitioners, medical administrators and other relevant personnel at both public and private healthcare providers, including being asked unnecessary and invasive personal and medical questions; not receiving adequate treatment or care; and private medical information being shared by medical practitioners with persons who are not involved in the treatment of a patient.</p> <p>LGBTQ+ individuals with particular healthcare needs relating to their gender identities, such as trans and gender non-conforming persons, may experience being treated as objects of curiosity or ridicule and experience humiliation and distress as a result.</p> <p>The negative experiences LGBTQ+ individuals suffer at healthcare providers may prevent them from seeking healthcare in the first place, resulting in</p>	<ul style="list-style-type: none"> <li>• The Sri Lanka Medical Council and Nursing Council of Sri Lanka must introduce stronger guidelines on patient care and treatment for doctors, nurses and other medical practitioners with specific guidelines on treating LGBTQ+ individuals sensitively. These guidelines must be introduced at the point of registration for medical practitioners and periodically through a medical practitioner's career.</li> <li>• The Ministry of Health should make it easier for individuals accessing healthcare to make complaints about mistreatment or unethical behaviour they have suffered at the hands of medical practitioners. These complaints must be handled confidentially, and investigated promptly and thoroughly, with proper redress or remedies provided if a complaint is found to be justified.</li> </ul>

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29 ICESCR. [2000]. General Comment, available at: <https://www.refworld.org/pdfid/4538838d0.pdf>

30 World Professional Association for Transgender Health. "Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People," 2012, [http://www.wpath.org/uploaded\\_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf](http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf) [accessed July 21, 2016], p. 54

31 Sri Lanka Medical Council. Guidelines on ethical conduct for Medical & Dental practitioners registered with the Sri Lanka Medical Council. Colombo: Ananda Press; 2003.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Quality of physical health services available for LGBTIQ+ individuals</b>			
		<p>adverse effects on their health.</p> <p>The ability of individuals who experience gender dysphoria to undergo gender reassignment hormone therapies and surgeries in a safe, accessible and sensitive manner is hampered by:<sup>32</sup></p> <p>A lack of knowledge by medical practitioners about what hormone therapies and surgeries are appropriate, and relatedly the risk of having unsafe gender reassignment surgeries performed on them with little support thereafter;</p> <p>the unavailability of certain gender reassignment hormone therapies and surgeries at the public level, and sometimes not even the private level, leaving overseas healthcare providers as the only option.</p> <p>Absence of duty of care by medical practitioners where individuals who wish to undertake gender reassignment hormone therapies and surgeries are discouraged from it or subjected to discrimination; and prohibitive costs for gender reassignment hormone therapies and surgeries available through the private sector in Sri Lanka.</p>	<ul style="list-style-type: none"> <li>• Medical practitioners should be trained in safe, appropriate gender reassignment hormone therapies and surgeries for individuals experiencing gender dysphoria.</li> <li>• Medical practitioners should be sensitised on how individuals experiencing gender dysphoria should be treated when receiving gender reassignment hormone therapies and surgeries.</li> <li>• The costs of gender reassignment hormone therapies and surgeries for individuals experiencing gender dysphoria should be borne by the state.</li> </ul>

32 Human Rights Watch, 2016, "All Five Fingers Are Not the Same" - Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka, available at: <https://www.refworld.org/docid/57b87cf14.html>



Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Quality of mental health services available for LGBTIQ+ individuals</b>			
<p>Support the provision of high-quality mental health care treatment for all. Psychiatrists should provide appropriate, non-discriminatory treatment to all people, regardless of their sexual orientation, gender identity or gender expression.<sup>33</sup></p>	<p>The Mental Diseases Ordinance holds the MOH responsible for the provision of mental health services at primary, secondary and tertiary levels.<sup>34</sup></p> <p>There are multiple government and private organisations that provide mental health support for LGBTIQ+ individuals – including counselling support.<sup>35</sup></p>	<p>There is no monitoring mechanism or committee to assess the quality of the services providers or to measure the competencies of the psychosocial workers working with LGBTIQ+ individuals.<sup>36</sup> Since none of the existing public curricula or training programmes directly address care for the mental health of LGBTIQ+ individuals, it is difficult to determine whether the delivery of these mental health services is subject to personal bias and prejudice.<sup>37</sup></p> <p>The lack of inclusion regarding the experiences of and challenges faced by the LGBTIQ+ community in training centres and educational institutions for mental health practitioners results in their failure to understand context and re-evaluate their own values and attitudes towards their patients in an objective manner.</p> <p>This lack of training and experiences leaves them completely unprepared and unsuitable for providing mental health services for LGBTIQ+ individuals.</p>	<ul style="list-style-type: none"> <li>• The MOH must implement and monitor the inclusion of information and practical demonstrations of providing psychosocial support for LGBTIQ+ individuals during state administered training for counsellors and mental health professionals.</li> <li>• The MOE must re-evaluate and make necessary revisions in existing learning and training materials to include compulsory provisions for understanding and responding to the specific psychosocial needs and experiences of LGBTIQ+ individuals in the existing educational curricula for counsellors and mental health professionals.</li> <li>• The Ministry of Health must decentralise availability of mental health services to ensure LGBTIQ+ individuals from all districts can access in person psychosocial support in a language of their choice. In situations where this</li> </ul>

Contd. ➔

33 Canadian Psychiatric Association. [2014]. Mental Health Care for People Who Identify as Lesbian, Gay, Bisexual, Transgender, and (or) Queer, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4244881/>

34 Mental Diseases Ordinance, No. 1 of 1973.

35 Family Planning Association of Sri Lanka offers counselling for LGBTIQ+ individuals via Alokaya Counseling Center, available at: <http://www.fpasrilanka.org/content/alokaya-counselling-centre>

36 Department of Probation and Child Care Services. National Counseling & Training Center for Children, available at: [http://www.probation.gov.lk/pages\\_e.php?id=2](http://www.probation.gov.lk/pages_e.php?id=2)

37 Higher National Institute of Social Development. Higher Diploma in Counselling: Course Structure, available at: [https://nisd.ac.lk/index.php?option=com\\_content&view=article&id=25&Itemid=148&lang=en](https://nisd.ac.lk/index.php?option=com_content&view=article&id=25&Itemid=148&lang=en) - course-structure

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Quality of mental health services available for LGBTIQ+ individuals</b>			
		<p>Despite the availability of counselling services for LGBTIQ+ individuals, access to such services is not satisfactory. Existing stigma towards both the LGBTIQ+ community and mental health can prevent individuals from accessing this support even if it is freely available. Most importantly, these services are physically based in the Colombo district and therefore are restricted to LGBTIQ+ individuals in Colombo. Even though some of these organisations offer counselling through online and hotline mechanisms, it must be noted that there is a severe lack of in-person mental health support for LGBTIQ+ individuals who live outside of Colombo.</p> <p>Moreover, the cultural and religious stigma that surrounds LGBTIQ+ individuals can reinforce the need for harsh measures such as 'conversion therapy'<sup>38</sup> despite it not being a recognised or legal medical intervention for LGBTIQ+ individuals.</p>	<p>might prove to be challenging, existing services must identify ways to create a more meaningful and trusting connection with LGBTIQ+ individuals who access this service via online and hotline mechanisms.</p> <ul style="list-style-type: none"> <li>• The Directorate of Mental Health must re-evaluate their current list of functions<sup>39</sup> and include and prioritise the elimination of stigma regarding mental health issues among LGBTIQ+ individuals and other marginalised communities.</li> </ul>

38 Roar Media. (2019). Homosexuality is Wrong: The Chilling Reality of Conversion Therapy in Sri Lanka, available at: <https://roar.media/english/life/srilanka-life/reality-conversion-therapy-sri-lanka>

39 The current list of functions prioritized by this unit does not include any efforts to reduce the misconceptions around mental health and LGBTIQ+ individuals in Sri Lanka. Ministry of Health, Nutrition and Indigenous Medicine. Directorate of Mental Health, available at: <https://mentalhealth.health.gov.lk>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Quality of sexual and reproductive health services available for LGBTIQ+ individuals</b>			
<p>Non-discrimination, in the context of the right to sexual and reproductive health, encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status.<sup>40</sup></p>	<p>The Population and Reproductive Health Policy of Sri Lanka emphasises the importance of addressing emerging reproductive health issues and achieving gender equality.<sup>41</sup></p> <p>The Health Services Act of Sri Lanka states that the Health Department is responsible for the provision of establishments and services (including courses of training) necessary for the prevention and treatment of disease and generally for the preservation and promotion of the health of the people.</p> <p>Similar to mental health services, only a few institutions, mostly private, that offer unrestricted, inclusive and non-discriminatory sexual and reproductive health services to LGBTIQ+ individuals.<sup>42</sup></p>	<p>Sexual and reproductive health services offered by the state and the private sector are largely heteronormative and based on the cultural and social values of the nation. The patriarchal nature of these support services directly discriminates against individuals of diverse SOGIESC.<sup>43</sup></p> <p>The heteronormative nature of and cultural influence towards existing SRHR services directly and indirectly discriminate against LGBTIQ+ individuals. For example, the Family Health Bureau's approach to sexual and reproductive health implies that sexual health is only relevant to married couples. By this assumption, the SRH needs of LGBTIQ+ are ignored and overlooked since there is much stigma towards same sex relationships.</p> <p>The lack of mention of the physical and sexual wellbeing of trans women under FHB's</p>	<ul style="list-style-type: none"> <li>• The MOH must invest in implementing and monitoring awareness programmes, starting at school level, to normalise access and reduce the stigma and shame associated with the use of sexual and reproductive health services. Sensitisation must also be conducted for staff in sexual and reproductive health clinics to treat patients – including LGBTIQ+ individuals – with respect and without judgement.</li> <li>• The MOH must fund research regarding the SRH needs, experiences and challenges of LGBTIQ+ individuals – including those living in war affected areas – and subsequently incorporate these findings into existing policies and frameworks.</li> </ul>

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40 United Nations. (2016). Economic and Social Council. General comment No. 22 (2016) on the right to sexual and reproductive health [article 12 of the International Covenant on Economic, Social and Cultural Rights] , available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx>

41 Ministry of Health Sri Lanka, Population and Reproductive Health Policy of Sri Lanka, available at: [http://www.health.gov.lk/moh\\_final/english/public/elfinder/files/publications/publishpolicy/PolicyRepository.pdf](http://www.health.gov.lk/moh_final/english/public/elfinder/files/publications/publishpolicy/PolicyRepository.pdf)

42 Family Planning Association. Sexual and Reproductive Health and Allied Services, available at: <http://www.fpasrilanka.org/content/sexual-and-reproductive-health-and-allied-services>

43 Ministry of Health. Family Health Bureau: Gender and Women's Health Unit, available at: <https://fhb.health.gov.lk/index.php/en/technical-units/gender-women-s-health-unit>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Quality of sexual and reproductive health services available for LGBTIQ+ individuals</b>			
		<p>gender and women' unit further discriminates transgender individuals from accessing public health services that must be accessible for all women. The unit does not cater its services to LBT individuals and therefore excludes their fertility requirements.</p> <p>Self-stigma as well as the fear of facing stigma from society, family and the health professionals is a major barrier in regularly accessing Sexual and Reproductive Health (SRHR) services. Despite the availability of reproductive health services for LGBTIQ+ individuals in the private sector, negative connotations associated with sexual health and prejudice towards LGBTIQ+ individuals decrease the likelihood of LGBTIQ+ individuals accessing treatment, check-ups and clinics to ensure and maintain their sexual and reproductive health.</p>	<ul style="list-style-type: none"> <li>• The Family Health Bureau must extend its services to the LGBTIQ+ community – especially trans individuals. Their health needs must be incorporated into services offered by the 'Gender and Women' Unit.</li> </ul>

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Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Quality of sexual and reproductive health services available for LGBTIQ+ individuals</b>			
		<p>Research conducted on the sexual and reproductive health in war affected areas too overlooks the importance of including LGBTIQ+ individuals in the research sample.<sup>44</sup> The exclusion of LGBTIQ+ individuals from conflict affected areas in existing research efforts prevents us from understanding the impact of war, poverty and violence on sexual and reproductive health services accessed by this community.</p>	

<sup>44</sup> Kottegoda, S., Samuel, K. & Emmanuel, S. [2008]. Reproductive Health Concerns in Six Conflict Affected Areas in Sri Lanka, available at: <https://pubmed.ncbi.nlm.nih.gov/18513609/>

## EMPLOYMENT



The purpose of this section is to highlight key areas of discrimination relevant to LGBTIQ+ individuals in the employment sector. LGBTIQ+ individuals experience significant discrimination in the labour market throughout their employment cycle due to their sexual orientation and gender identity. They are denied access to employment, training and promotion. The needs of this community are overlooked when drafting workplace policies on medical insurance, anti-harassment training and even dress codes. Due to pre-existing stigma, prejudice and stereotypes in the workplace, these individuals face serious challenges in accessing employment opportunities and encounter difficulties in retaining and improving their status at work.

However, these issues are not discussed at an organisational level since LGBTIQ+ individuals are rarely well represented in government structures, employers' organisations, trade unions or in any leadership capacity. Therefore, the unique challenges faced by this community is excluded from the current narrative on promotion of health and safety in the workplace. Moreover, the lack of efficient and non-judgmental redress mechanisms prevents these incidents of discrimination and harassment from being documented and thereby prevents the state from understanding the extent and forms of discrimination experienced by LGBTIQ+ individuals in the work setting.

In addition, LGBTIQ+ individuals working in the informal sector such as sex work also face significant discrimination and violence due to the lack of laws and policies to protect them. While legislation and policies might be in place in the private sector to protect the rights of LGBTIQ+ employees, they are often poorly applied and therefore discrimination and violence still remains to be a cause for concern – especially due to the rigid and heteronormative gender norms in the world of work.

Research shows that promoting equality and diversity in the workplace not only promotes safe and satisfied workforce, but also makes good business sense since liberating employment practices such as recruitment, training and promotions from existing gender bias and stereotypes based on SOGIESC allows companies to improve their talent pool and increase their access to markets.

This section deals with four themes which the researchers have identified as areas that require immediate improvement to challenge the current experiences of LGBTIQ+ individuals in their world of work namely: Discrimination in recruitment/termination/conduct; harassment and violence in the workplace; discrimination of sex workers; and employee benefits. The Ideal Settings have been primarily based on recommendations by the International Labour Organisation on ensuring equal rights and benefits for LGBTIQ+ workers in the workplace.

This analysis of the experiences of LGBTIQ+ individuals in the workplace suggests that the Department of Labour must re-evaluate existing policies on recruitment, employee benefits and harassment in the workplace. In addition, along with the support of relevant stakeholders in the employment sector such as EFC and the Department of Labour must invest in sensitivity training for employers to ensure LGBTIQ+ individuals, including sex workers, are treated with respect and dignity in their work environments.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Discrimination of LGBTIQ+ persons in recruitment, workplace conduct and termination</b>			
<p>Practice of equality and non-discrimination of LGBTIQ+ individuals in the world of work through the promotion of diversity in workplaces where all working individuals are equally respected and have equal opportunities for advancement.<sup>45</sup></p>	<p>The state recognises the right to work and the right to just, favourable and non-discriminatory conditions of employment.<sup>46</sup></p> <p>The Termination of Employment of Workmen (Special Provisions) Act No 45 makes it mandatory for the employer to inform the employee, in writing, of the reasons for the dismissal before the expiry of the second working day after the dismissal has taken place.</p> <p>Sri Lanka has adopted ILO C190 Convention which calls for a violence free workplace for all employees.<sup>47</sup></p>	<p>Despite existing laws, lack of sensitisation and policies on non-discrimination on basis of sexual orientation and gender identity contributes to existing stigma and prejudice and thereby prevents recruiters and employers from treating LGBTIQ+ candidates with respect and dignity during recruitment processes. Many are denied jobs and promotions on the basis of gender expression especially for being “too feminine” or “not feminine enough.” Unlawful and arbitrary termination of employment are also common experiences for LGBTIQ+ individuals since there is no efficient redress mechanism to report terminations on the basis of SOGIESC.<sup>48</sup></p> <p>Trans individuals in particular experience significant discrimination in the workplace. They can be rejected during interviews simply due to their appearance and are discouraged from using toilets</p>	<ul style="list-style-type: none"> <li>• The Government must ratify ILO C190 Convention, which calls for a violence free workplace for all employees, including those of diverse sexual orientation and gender identities to eliminate harassment and violence experienced by LGBTIQ+ individuals in the workplace.</li> <li>• Department of Labour must invest in mandatory gender training and sensitisation for employees. Such training must be implemented, especially with the participation of key individuals such as recruiters, to reduce discrimination of LGBTIQ+ individuals during recruitment processes. In addition, recruitment policies must reflect the non-discriminatory standards mentioned in the existing Covenant and thereby prevent any direct or indirect discrimination of LGBTIQ+ individuals from accessing employment.</li> </ul>

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45 International Labour Organisation. (2015). “LGBT Workers are Entitled to Equal Rights and Benefits in the Workplace.” available at: <https://www.ilo.org/global/about-the-ilo>  
 46 ICCPR Articles 6 & 7. (1976), available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>  
 47 Sri Lanka adopted the ILO C190 Convention in 2019 and is currently in the process of rallying for its ratification, an effort headed by local trade unions, available at: <http://www.ft.lk/opinion/Trade-unions-press-State-to-ratify-ILO-Convention/14-693634>  
 48 Human Rights Watch. (2016). All Five Fingers Are Not the Same: Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka, available at: [https://www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf)

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Discrimination of LGBTIQ+ persons in recruitment, workplace conduct and termination</b>			
		<p>appropriate to their gender. Moreover, the need to submit official documentation such as birth certificates and national identity cards during recruitment processes expose trans individuals to unwarranted scrutiny from employers. These challenges often leave trans individuals with few survival alternatives other than sex work, often in dangerous conditions.<sup>49</sup></p> <p>Stereotyping and negative responses to gender non-conformity creates an uncomfortable and unsafe work environment for LGBTIQ+ individuals. For example, dress codes which are often heteronormative in nature have a severe impact on the sense of belonging, inclusion and safety of employees who do not conform to gender norms. This nonconformity can result in alienation and ridicule and in some circumstances the need for income and survival might influence</p>	<ul style="list-style-type: none"> <li>• In work environments where policies on sexual orientation and gender identity are difficult to implement, employers and recruiters must be educated on alternative topics of discussion that are still relevant. For example, at the least, definitions of masculinity and femininity and the harmful impact of gender roles and stereotypes in the workplace should be discussed.</li> <li>• The EFC must ensure that the state recognises and implements penalties for discrimination on the basis of sexual orientation, gender identity and expression, including unlawful terminations, which must be enforced effectively in order to eliminate the culture of normalising LGBTIQ+ discrimination and harassment. Individuals who perpetuate such discrimination must be held accountable for their actions by</li> </ul>

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<sup>49</sup> Human Rights Watch. (2016). Sri Lanka: Challenging Gender Norms Brings Abuse, available at: <https://www.hrw.org/news/2016/08/15/sri-lanka-challenging-gender-norms-brings-abuse>



Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Discrimination of LGBTIQ+ persons in recruitment, workplace conduct and termination</b>			
		<p>LGBTIQ+ individuals to compromise their gender expression in their place of work. For example, the Sri Lanka Army Act describes committing “unnatural” acts as a form of “disgraceful conduct” that is considered as ‘a military offense’ which could result in imprisonment.<sup>50</sup></p> <p>The lack of supportive leadership and LGBTIQ+ representation in leadership roles is a contributing factor to the negative experiences of LGBTIQ+ individuals in employment as the absence of empathetic role models can promote these negative attitudes.</p>	<p>the employers in order to promote respect for diversity and difference in the workplace.</p> <ul style="list-style-type: none"> <li>• EFC must ensure that both public and private organisations must not hinder LGBTIQ+ individuals from accessing leadership roles. In order to promote diversity the LGBQTI+ persons must be offered more opportunities to reach higher roles in management. Meanwhile current leaders and management must be encouraged to take an open stand on LGBTIQ+ issues and discourage reticence and passivity.</li> </ul>

<sup>50</sup> Sri Lanka Army Act, available at: [http://www.defence.lk/Publication/army\\_act](http://www.defence.lk/Publication/army_act)

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Harassment of LGBTIQ+ persons in the workplace</b>			
<p>LGBTIQ+ workers are equally entitled to the right to be free from discrimination at work.<sup>51</sup> The promotion of workplaces where LGBTIQ+ employees are accepted and can work without fear of stigma, discrimination, harassment or violence.</p>	<p>Section 345 of the Penal Code criminalises sexual harassment through the use of words or actions.</p> <p>The National Policy on HIV/AIDS in the world of work in Sri Lanka states that all programs must be gender sensitive, as well as sensitive to race and sexual orientation.<sup>52</sup></p>	<p>Sri Lanka has no law explicitly outlawing discrimination and harassment on the grounds of sexual orientation or gender identity.<sup>53</sup></p> <p>Many cases of harassment – sexual, verbal, emotional and otherwise, experienced by LGBTIQ+ individuals have been documented by researchers and civil society organisations.<sup>54</sup> However, recommendations made in these studies are often ignored by policy makers.</p> <p>While some policies in the private sector do offer protection for LGBTIQ+ employees, perceived non-conformity to heteronormativity does result in passive aggressive treatment and stigma towards LGBTIQ+ employees in the private sector. As LGBTIQ+ employees are rarely represented in government structures, employers' organisations and workers' unions, their interests and experiences are often</p>	<ul style="list-style-type: none"> <li>• Law enforcement must enforce section 345 of the Penal Code when sexual harassment occurs – regardless of the gender identity and sexual orientation of the victim. The law must apply equally to all citizens.</li> <li>• Department of Labour must invest in and monitor the implementation of mandatory sexual harassment training – which must be developed and delivered with a specific focus on harassment based on gender, gender identity, expression and sexual orientation.</li> <li>• EFC must hold public and private organisations accountable for the development of efficient, accessible, anonymous and non-judgemental reporting mechanisms. This includes ensuring accountability for including the LGBTIQ+ community in mechanisms for legal and</li> </ul>

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51 International Labour Organisation. (2015). LGBT Workers are Entitled to Equal Rights and Benefits in the Workplace, available at: <https://www.ilo.org/global/about-the-ilo>

52 Ministry of Labour and Labour Relations. (2010). National Policy on HIV/AIDS in the World of Work in Sri Lanka, available at: <http://www.bakamoono.lk/admin/wp-content/uploads/2016/06/National-Policy-on-HIV-AIDS-in-World-of-Work-in-SL.pdf>

53 Penal Code of Sri Lanka: Section 345, available at: [http://www.commonlii.org/lk/legis/num\\_act/pca22o1995213/s5.html](http://www.commonlii.org/lk/legis/num_act/pca22o1995213/s5.html)

54 Equal Ground. (2016). Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender People in Sri Lanka: A Shadow Report, available at: [https://tbinternet.ohchr.org/Treaties/CESCR/Shared Documents/LKA/INT\\_CESCR\\_ICO\\_LKA\\_25036\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/LKA/INT_CESCR_ICO_LKA_25036_E.pdf)

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Harassment of LGBTIQ+ persons in the workplace</b>			
		<p>overlooked in the process of policy making and social dialogue.</p> <p>Another consequence of the absence of clear policies on LGBTIQ+ harassment in the workplace is that harassment rooted in anti LGBTIQ+ attitudes are normalised and therefore are considered the norm. This applies especially to verbal harassment where derogatory remarks and slurs about LGBTIQ+.</p> <p>The exclusion of LGBTIQ+ in harassment policies, the lack of effective and non-judgmental redress mechanisms and the failure to address this issue in workplace training often reinforces instances of LGBTIQ+ harassment in the workplace and consequently amounts to constructive termination of LGBTIQ+ employees.</p>	<p>psychosocial support that is readily available to all vulnerable communities.</p>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Discrimination of LGBTIQ+ sex workers</b>			
<p>Sex workers, clients, third parties, families, partners and friends do not face penal sanction and other forms of legal punishment of sex work.<sup>55</sup></p>	<p>The law does not explicitly criminalise sex work. However, the Vagrants' Ordinance and Brothel Ordinance are used to criminalise sex work and arbitrarily and unlawfully arrest sex workers. In addition, legal provisions, such as section 9 &amp; 11 of the Vagrants Ordinance, use outdated terminology such as 'prostitute' to refer to sex workers.<sup>56</sup></p>	<p>Trans persons and MSM who engage in sex work are particularly affected by the stigma attached to their gender identity and sexual orientation. They experience police brutality and are subjected to arbitrary arrests. This occurs partly due to the lack of clear policies to protect their rights and partly due to the lack of knowledge on their part about their rights.<sup>57</sup> Sex workers experience violence from family members, exploitation by clients and managers as well as abuse and harassment via the police – especially due to their sexual orientation, gender identity and expression.<sup>58</sup></p> <p>Derogatory and disrespectful terminology in legal documents can further contribute towards the existing stigma and prejudice towards sex workers. It can discourage people from using the politically</p>	<ul style="list-style-type: none"> <li>• The state must hold law enforcement officers accountable for arbitrary and unlawful arrests of sex workers – including LGBTIQ+ sex workers – while also investing in sensitisation training for key law enforcement members and educate police officers to end violence against sex workers.</li> <li>• Department of Labour must publicly recognise sex work as work and ensure protection for sex workers from violence and exploitation, access to better working conditions, access to social welfare benefits and the right to freely engage in their employment without fear of reprisal or violence by the State.</li> <li>• Civil society organisations must provide sex workers with training</li> </ul>

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55 Global Network of Sex Worker Projects. [2014]. Sex Work and The Law: Understanding Legal Frameworks and the Struggle for Sex Work Law Reforms, available at: [https://www.nswp.org/sites/nswp.org/files/Sex Work %26 The Law.pdf](https://www.nswp.org/sites/nswp.org/files/Sex%20Work%20The%20Law.pdf)

56 National STD/AIDS Control Program. Laws Concerning Commercial Sex and HIV/AIDS Prevention, available at: [https://www.aidscontrol.gov.lk/images/pdfs/books/Laws\\_Concerning\\_en.pdf](https://www.aidscontrol.gov.lk/images/pdfs/books/Laws_Concerning_en.pdf)

57 Novich, M. [2015]. Perceptions of Policy Legitimacy Among Female Sex Workers in Sri Lanka, available at: [https://www.researchgate.net/publication/283125144\\_Perceptions\\_of\\_police\\_legitimacy\\_among\\_female\\_sex\\_workers\\_in\\_Sri\\_Lanka](https://www.researchgate.net/publication/283125144_Perceptions_of_police_legitimacy_among_female_sex_workers_in_Sri_Lanka)

58 Human Rights Watch. [2016]. All Five Fingers Are Not the Same: Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka, available at: [https://www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf)

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Discrimination of LGBTIQ+ sex workers</b>			
		<p>correct terminology and reinforce ignorant stereotypes.</p> <p>The violence and harassment experienced by sex workers often goes unnoticed and unreported – partly due lack of efficient documentation of such incidents and partly due to the unwillingness of victims to make complaints. Sex workers, including those who identify as LGBTIQ+, are generally reluctant to come forward and report incidents of abuse since there is a tendency for police to disbelieve and dismiss sexual violence perpetrated against sex workers or even to normalise it.</p> <p>The stereotyping of sex workers, trans sex workers in particular, as criminals and individuals with ‘loose morals’ prevent them from accessing basic facilities such as birth registration or disaster relief from their administrative officers. For example, sex workers experienced significant difficulties in accessing relief funds provided to citizens</p>	<p>and awareness opportunities to keep them informed of their rights and empower them to challenge human rights violations. In addition, CSOs must identify legal services that can offer free and accessible legal programs to sex workers to obtain advice and to efficiently report/document incidents of violence, harassment and discrimination.</p>

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Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Discrimination of LGBTIQ+ sex workers</b>			
		during the COVID-19 pandemic solely due to their job status and SOGIESC. Sex workers also experience difficulties in accessing healthcare services due to discrimination by staff in hospitals. They are denied loans and financial credits partly due to economic difficulties but mostly due to existing prejudice and their lack of social capital.	

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Employee benefits</b>			
LGBTIQ+ individuals receive the same employee benefits as non LGBTIQ+ individuals.	Sri Lankan employment law sets out general terms for the dispensation of employee benefits. <sup>59</sup> This includes:  regular employee benefits such as paid annual leave (which is available following one year of employment), overtime compensation, profit-sharing and bonuses;  long-term employee benefits such as long-service leave or sabbatical leave and jubilee or other long-service benefits;	The lack of anti-discrimination protection in employment law means that LGBTIQ+ employees are at risk of partial or complete denial of their benefits on the grounds of their SOGIESC.  While the denial or improper dispensation of employee benefits can be challenged legally (through the Labour Tribunal), this is a difficult step for any employee to take under normal circumstances,	<ul style="list-style-type: none"> <li>• Anti-discrimination legislation which includes LGBTIQ+ identity as a ground of non-discrimination should be enacted. Such legislation should apply to all employers.</li> <li>• The Department of Labour should provide general guidance for the disbursement of non-monetary benefits that employers can provide at their discretion. Employees should have recourse to the Labour Tribunal to challenge</li> </ul>

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<sup>59</sup> Including the Shop and Office Employees (Regulation of Employment and Remuneration) Act 1954.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Employee benefits</b>			
	<p>and post-employment benefits, such as retirement benefits, post-employment life insurance and post-employment medical care.</p> <p>Certain non-monetary benefits such as medical care, housing, cars and free or subsidised goods or services to their employees are not defined under law, and both public and private employers may decide how to dispense them to their employees.</p>	<p>and is even more difficult for LGBTIQ+ employees.</p> <p>For other non-monetary benefits that are not guaranteed under law, the denial or improper dispensation to them cannot be challenged by LGBTIQ+ employees who must suffer this discrimination without recourse.</p>	<p>the denial or inequitable dispensation of these benefits.</p> <ul style="list-style-type: none"> <li>• Anti-discrimination legislation which includes LGBTIQ+ identity as a ground of non-discrimination should be enacted. Such legislation should apply to all employers.</li> </ul>
	<p>Every employee in Sri Lanka is entitled to a paid sick leave (sickness benefit) for private business, ill-health or any other reasonable cause.<sup>60</sup> These are generally known as casual leave.</p> <p>On the first year of employment, an employee is entitled to 1 day of casual leave for every 2 completed months of service. From the second year onwards, the employee is eligible for 7 days of casual leave in a 12-month period. Casual leave does not include leave in the case of prolonged ill health.</p> <p>A trainee is entitled to 7 days of sick leave with full allowances payable to them, for a period, or aggregate of periods, if the application for leave is supported by a medical certificate issued by a registered medical practitioner.<sup>61</sup></p>	<p>LGBTIQ+ individuals may be unable to access their sick leave entitlements where they fear disclosing certain illness or medical issues for fear of further discrimination at the workplace (for instance, when receiving hormone therapy or antiretroviral therapy).</p> <p>The fear of workplace discrimination or losing employment would thus have a negative impact on their health.</p>	<ul style="list-style-type: none"> <li>• Legislation on the right to privacy (as discussed in under Civic Issues and Entitlements) should be broad enough to encompass the disclosure of health and medical information to employers.</li> </ul>

<sup>60</sup> Shop and Office Employees [Regulation of Employment and Remuneration] Act, sections 6(3) and (4).

<sup>61</sup> Employment of Trainees [Private Sector] Act, section 6.

## HOUSING



This section considers LGBTIQ+ Sri Lankans' enjoyment of the human right to adequate housing. The right to adequate housing is recognised in the International Covenant on Economic, Social and Cultural Rights as an element of the right to an adequate standard of living.<sup>62</sup>

Derived from the idea of the 'inherent dignity of the human person', the right to adequate housing is broader than simply ensuring that each person has a roof over their head. Rather, it is considered as 'the right to live somewhere in security, peace and dignity'. The notion of 'adequate' housing means that there should be 'adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location relative to work and basic facilities — all at a reasonable cost'. The right to housing should be ensured to all persons irrespective of income or access to economic resources.<sup>63</sup>

These issues are discussed below in greater detail, particularly in how they manifest 'gaps' in law and policy related to housing. In dealing with them, this section focuses on private housing, rented housing, housing available on State land, and public-sector housing financing schemes and subsidies. We consider these aspects of housing in Sri Lanka through the lens of several international standards on housing rights developed by the Committee on Economic, Social and Cultural Rights in its General Comment No. 4.<sup>64</sup> The Committee expands on this right under several themes. These are 'Accessibility', 'Security of tenure', 'Availability of services', 'Affordability', 'Monitoring and strategy' and 'Non-discrimination'. Though the General Comment also deals with a few other standards, we limit ourselves to the above standards as the aspects 'most' relevant to our assessment on adequate housing and LGBTIQ+ Sri Lankans.

The stigma and discrimination that LGBTIQ+ Sri Lankans face in society endangers their right to adequate housing. For cultural and economic reasons, most Sri Lankans live with their biological family in a common home, at least until marriage, though some may remain in the family home even after. However, not all LGBTIQ+ Sri Lankans can live this way. Undue restrictions and surveillance at the family home may deprive them of privacy and a sense of security. They may be subject to domestic violence especially at the hands of fathers and brothers. Some of them may also find themselves thrown out of home by family members. On the other hand, some LGBTIQ+ Sri Lankans may wish to leave their family home voluntarily, either to live alone, with friends, or with lovers. All such LGBTIQ+ Sri Lankans may face stigma and discrimination in trying to access adequate housing for themselves. By virtue of being LGBTIQ+, they may fail to meet the expectations of a seller of a property, a prospective landlord or an officer administering a housing subsidy or financing scheme. They may also face certain economic disadvantages: they may reflect a poor educational background if their school education had been disrupted by bullying, harassment and other forms of stigma and discrimination. They may be struggling with mental health issues and addiction resulting from trauma linked to stigma and discrimination, and this may hamper their income-earning capacity. Their appearance and gender identity and expression may restrict their employment opportunities. They may also have disabilities. Thus, LGBTIQ+ Sri Lankans seeking access to adequate housing may encounter multiple difficulties that all stem from the stigma and discrimination they face in society.

The challenge of retaining a 'place of dwelling' follows even after gaining access to it. LGBTIQ+ Sri Lankans are vulnerable in their enjoyment of tenure, whether it is in terms of self-owned property, rented housing, or living in a State-owned land. Unlawful evictions could happen at the hands of roommates,

<sup>62</sup> ICESCR, Article 11(1).

<sup>63</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing [Art. 11 (1) of the Covenant], 13 December 1991, E/1992/23, available at: <https://www.refworld.org/docid/47a7079a1.html> [accessed 26 December 2020], para. 7 [hereinafter, CESCR, GC 4].

<sup>64</sup> CESCR, GC 4.



housemates, neighbours, landlords, local authorities, or even family members. The threat of losing one’s place of living is a constant fear faced by many LGBTIQ+ Sri Lankans. Their tendency to be poor makes them more vulnerable to poor standards in housing, in terms of available amenities, but also in respect for privacy by landlords, co-occupants, neighbours, family members.

Though some general legal protections exist in the field of housing, their availability depends on the quality of access to justice in the country. As discussed elsewhere in this analysis, many LGBTIQ+ Sri Lankans may lack awareness of various legal protections already available to them and may also be unable to find appropriate and affordable legal representation for their grievances. As discussed, they are also vulnerable to discrimination when accessing institutions in the justice sector. These limitations in access to justice should be seen as diluting the strength of whatever legal protections that already exist in the area of housing.

A key concern in reforming the housing sector is the lack of data collection and management by the relevant authorities on how vulnerable groups like LGBTIQ+ Sri Lankans fare in the sector. Without data, the extent of the impact of existing policies on LGBTIQ+ Sri Lankans remain unknown.

Other reforms suggested in this section include the strengthening of rent law to protect tenants from arbitrary and discriminatory landlords; regulatory adjustments that may balance the housing stock available in the country with the national housing need; changes to police powers in the context of dispossession of property; ensuring transparency and equity in the context of State land permits and housing subsidies and financing schemes; reforming State land recovery laws to be fairer and more humane.

The housing policy in Sri Lanka has generally followed a combined model of direct state intervention, State-assisted self-help, and private sector facilitation. We do not assume the availability of unlimited resources in envisioning improvements to current settings in Sri Lanka.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Effective monitoring and strategizing</b>			
<p>The Government takes steps to ascertain the full extent of homelessness and inadequate housing within its jurisdiction.<sup>65</sup></p>	<p>Sri Lanka has conducted a decennial population and housing census since 1871, the most recent of which was administered in 2012.</p>	<p>The census collected no data specifically identifying the issues relevant to LGBTIQ+ Sri Lankans’ enjoyment of the right to adequate housing.<sup>66</sup></p>	<ul style="list-style-type: none"> <li>• The Government should implement data collection and management systems within the land permit sector, housing financing and subsidy sector as well as at appropriate levels of the rental sector, in a manner respecting the right to privacy of owners and occupiers of houses, not only to measure characteristics</li> </ul>

Contd. 

<sup>65</sup> CESCR, General Comment 4, para. 13.

<sup>66</sup> Department of Census and Statistics and Statistics, ‘Census of Housing and Population 2012’, available at: <http://www.statistics.gov.lk/pophousat/cph2011/Pages/Activities/Reports/FinalReport/FinalReportE.pdf>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Effective monitoring and strategizing</b>			
			of households and housing markets, but also to monitor socioeconomic and cultural factors conditioning the sectors, especially as relevant to groups identified as particularly vulnerable in accessing adequate housing in Sri Lanka, including LGBTIQ+ Sri Lankans.
	The key proposal in the National Housing Policy (2016) on effective monitoring is to establish an interactive public access ePlatform for Housing in Sri Lanka. However, no such platform appears to exist at the time of this writing.	An appropriately designed ePlatform for housing in Sri Lanka would be an ideal tool in monitoring the systemic nature of discrimination experienced vulnerable groups such as LGBTIQ+ Sri Lankans within the housing sector.	Same as above.
The Government, in ascertaining the extent of homelessness and inadequate housing, emphasises those groups within society that are vulnerable and disadvantaged with regard to housing. <sup>67</sup>	While some population statistics are disaggregated by age and sex, most statistics available in the report, including almost all statistics related to housing do not disaggregate based on any identity groups, including ethnicity, religion, disability, etc. Indeed, the chief focus of the housing census is on the characteristics of housing stock in Sri Lanka, rather	The lack of data on the extent of homelessness and inadequate housing as they impact LGBTIQ+ Sri Lankans perpetuates the systemic issues causing those problems in the first place.	Same as above. <ul style="list-style-type: none"> <li>• LGBTIQ+ community organisations as well as any other organisations working in the field of emergency shelters and emergency housing funds should document issues related to homelessness that they encounter.</li> </ul>

Contd.

<sup>67</sup> CESCR, GC 4, para. 13.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Effective monitoring and strategizing</b>			
	than the inhabitants themselves.		
	<p>A significant shortcoming of the Population and Housing Census of 2012 is its exclusion of homelessness from the substantive report, which also equates homelessness with rooflessness. Thus, the most recent data available in Sri Lanka on housing fails to monitor the extent of homelessness, including secondary homelessness where persons, even if they are not living in streets (i.e. primary homelessness), still lack a place of usual residence or live in shelters on a long-term basis.<sup>68</sup></p> <p>Even though the report vaguely cites 'various difficulties' in explaining its exclusion of homelessness in its substantive parts, the method relied on by the State in arriving at a 'count' of homeless people indicates the limitations in a) understanding homelessness and b) the sources of data currently available to gauge homelessness.</p>	<p>LGBTIQ+ Sri Lankans are at risk of being homeless, especially in terms of evictions from family homes and rented premises. In some other countries, homelessness is assessed through information collected by centres providing emergency shelters. The unavailability of such information to the Department of Census and Statistics as regards homeless people may indicate the lack of such centres, the lack of robust data management systems in such centres, or the non-recognition by the State of a broad enough concept of homelessness to include information gathered by such centres as relevant for homelessness.</p>	<ul style="list-style-type: none"> <li>• Housing censuses should include data about homelessness in its robust sense; the Department of Census and Statistics and Statistics should work with sheltering agencies in establishing accurate data.</li> </ul>

Contd.

<sup>68</sup> United Nations Department of Economic and Social Affairs Statistics Division, Principles and Recommendations for Population and Housing Censuses Revision 3 (UN, New York 2017), 38.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Effective monitoring and strategizing</b>			
The government undertakes extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives.	The National Housing Policy emphasises a people participatory approach to housing.	The policy, like the census, did not refer to any data specifically identifying issues relevant to LGBTIQ+ Sri Lankans' enjoyment of the right to adequate housing.	<ul style="list-style-type: none"> <li>Identify all groups describable as 'vulnerable', and ensure that they are taken into account in formulating the National Housing Policy.</li> <li>Include SOGIESC minorities in all policy-level formulations of 'vulnerable groups' requiring specific attention in all interventions related to the housing policy.</li> </ul>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Accessibility of housing</b>			
Adequate housing is accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. <sup>69</sup>	The Constitution of Sri Lanka does not recognise the right to adequate housing as a fundamental right, relegating it to the chapter on Directive Principles of State Policy, which are not directly enforceable through judicial processes. <sup>70</sup>	LGBTIQ+ Sri Lankans face various vulnerabilities in accessing and enjoying their right to adequate housing. Constitutional recognition of this right as applicable to all Sri Lankans is crucial in asserting its relevance to LGBTIQ+ Sri Lankans as well.	<ul style="list-style-type: none"> <li>Amend the Constitution to incorporate the right to adequate housing as recognised and developed in the ICESCR, to which Sri Lanka is a State party.</li> </ul>
	The National Housing Policy (2016 revision) identifies four groups requiring targeted housing interventions: conflict-affected families;	Many groups exist in Sri Lanka like LGBTIQ+ Sri Lankans who face particular vulnerabilities in accessing adequate housing, which can be	<ul style="list-style-type: none"> <li>Targeted measures to support special vulnerable groups should be equitable in considering all such communities, ensuring that</li> </ul>

Contd.

<sup>69</sup> CESCR, GC 4, para 8(e).

<sup>70</sup> Constitution of Sri Lanka, Article 27(2)(c).

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Accessibility of housing</b>			
	rural poor Samurdhi beneficiaries; estate workers; elderly living alone.	attributed to structural issues of the housing system that discriminate vulnerable groups like LGBTIQ+ Sri Lankans.	immediately available interventions are accessible to all such communities. Such measures may distribute its benefits progressively, proportionately and simultaneously among all such communities.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Legal security of tenure</b>			
All persons possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment, and other threats. <sup>71</sup>	Except for the broad guarantee of equal protection before the laws under Article 12, the Constitution does not guarantee security of tenure in housing or the right not to be deprived of one's property.	LGBTIQ+ Sri Lankans are vulnerable in their enjoyment of tenure, whether it is in terms of owned property, rented housing or employment-based accommodation. For example, they can be vulnerable to mob violence, discriminatory landlords and employers, or to family members or partners who wield the power to turn them away from their own home.	<ul style="list-style-type: none"> <li>• Incorporate protection of security of tenure including prohibitions of forcible evictions and arbitrary deprivation of property by both State and non-State actors within the Constitution's recognition of the right to adequate housing.</li> </ul>
	In general, any person dispossessed of immovable property (land/house) without a due legal process is entitled to be restored to their possession	The threat of losing one's place of living is a constant fear faced by many LGBTIQ+ Sri Lankans. It could happen at the hands of roommates,	<ul style="list-style-type: none"> <li>• Bring about improvements to access to justice (as discussed elsewhere in this Gap Analysis), including the better availability of legal aid.</li> </ul>

71 CESCR, GC 4, para 8(a).

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Legal security of tenure</b>			
	<p>through an action in civil court regardless of proof of title.<sup>72</sup> Dispossession need not be physically “forcible”. However, unless there is at least criminal force involved in the dispossession, the police will not act on behalf of a victim dispossessed of property.</p> <p>Any party that anticipates or actually experiences dispossession of land may file information in Primary Court seeking relief against the anticipated or actual dispossession; the Court may either prevent dispossession or restore possession through a summary procedure.<sup>73</sup></p> <p>On the other hand, if a ‘breach of the peace’ becomes likely owing to a dispute affecting land, any police officer inquiring into such dispute may file information in Primary Court and/or produce the disputants in Court, with a view to either preventing or redressing any dispossession of land of the original possessor.<sup>74</sup></p>	<p>housemates, neighbours, landlords or even own family members. Though the possessory remedy is a powerful tool in ensuring everyone enjoys undisturbed occupation of a place of dwelling until legally ordered to leave, the availability of this remedy is conditioned by the quality of access to justice available in the country, which is discussed in a separate section. Most LGBTIQ+ Sri Lankans, like most Sri Lankans, do not have economic access to Attorneys, and more over would be unaware of the available legal remedies.</p> <p>Similarly, though the Primary Court procedure empowers police officers to act on behalf of victims of dispossession by reporting to court, LGBTIQ+ Sri Lankans are often vulnerable to the trivialisation of complaints made to the police; indeed, police may also actively side with the opposing side of the dispute because of their own prejudices against SOGIESC minorities. Police may also take action only</p>	<ul style="list-style-type: none"> <li>• LGBTIQ+ community organisations should improve the awareness of LGBTIQ+ community about legal protections available to them.</li> <li>• LGBTIQ+ community organisations should support networks of LGBTIQ+ communities that may share legal awareness and link victims to organisations that may coordinate support responses on behalf of them.</li> <li>• Reform the Primary Court procedure to make mandatory the police officer’s obligation to report to court on complaints of dispossession of property/evictions from place of dwelling (and record reasons for why such complaints were not pursued).</li> <li>• Rights-based sensitivity training of police, highlighting the special nature of dispossession and eviction related to vulnerable groups such as LGBTIQ+ Sri Lankans.</li> </ul>

Contd.

<sup>72</sup> See Prescription Ordinance, No 22 of 1871, s 4 [as amended], which a civil possessory remedy at common (Roman-Dutch) law is recognised within one year and a day of an alleged event of dispossession.

<sup>73</sup> See Primary Courts Procedure Act, No 44 of 1979, ss 66(1)(b) and 68 [as amended].

<sup>74</sup> See Primary Courts Procedure Act, No 44 of 1979, ss 66(1)(a) and 68 [as amended].

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Legal security of tenure</b>			
	<p>A person dispossessed by a joint-possessor may be restored in possession.<sup>75</sup></p>	<p>against the LGBTIQ+ person as breaching the peace, and worsen the situation of someone already facing unlawful dispossession of their home.</p>	<ul style="list-style-type: none"> <li>• Strengthening sanctions against forcible evictions and disturbances of persons' occupation of their place of dwelling.</li> </ul>
	<p>The Rent Act provides for the legal grounds and judicial procedure through which a tenant may be evicted, even on grounds of rent being in arrears.<sup>76</sup></p> <p>A tenant may legally sue against any attempt to eject them which is outside the framework for court-ordered ejectment.</p> <p>The Rent Act also prohibits the stoppage or restriction of amenities that were previously available to the tenant, which has received recognition in law as 'constructive ejectment'.<sup>77</sup></p> <p>The Rent Act provides for Rent Boards to be constituted at the local authority level with power to review and make orders on some matters involving individual tenancy agreements.<sup>78</sup></p>	<p>Within the LGBTIQ+ community anecdotes of arbitrary evictions by landlords are commonplace. Even more common is the pressure of living in rented premises in constant fear of future eviction. Laws thought to criminalise homosexuality and being trans also weaken the bargaining power of an LGBTIQ+ tenant facing threats of eviction by a landlord. The possibility of being evicted also restricts otherwise legal conduct such as inviting friends over or dressing in attire of one's own choosing. Sometimes, due to economic pressures which may cause rent to fall into arrears.</p>	<ul style="list-style-type: none"> <li>• LGBTIQ+ community organisations should document issues faced by LGBTIQ+ Sri Lankans in terms of tenancy.</li> <li>• Reform rent law to ensure the applicability of the protective provisions against ejectment in the Rent Act to all rented residential premises.</li> <li>• Make explicit the prohibition of eviction of any tenant without a court order.</li> <li>• Make explicit that the stoppage of usual amenities and services as well as other forms of harassment attributable to a landlord falls within the definition of ejectment as a derivative form of ejectment.</li> <li>• Introduce new provisions in the same rent law on the right of tenants to enjoy the lawful use of rented premises</li> </ul>

Contd. 

75 GL Pieris, 293

76 See, Rent Act, No. 7 of 1972, ss 22 to 28 (as amended).

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Legal security of tenure</b>			
	<p>However, as amended, the Rent Act excludes a “large number of premises from the purview of the Rent Act” , including the protections against ejection.</p> <p>A tenant may make good on rates in arrears to be paid by the landlord to local Municipal Council and deduct the same from rent paid to the landlord to avoid seizure of the premises.</p>	<p>circumstances, tenants are compelled to occupy premises on a sharing basis with strangers, exposing them to further vulnerability of eviction, since landlords can be pressurised into evicting an LGBTIQ+ tenant by other tenants of the same premises. In such cases of co-tenancy, an LGBTIQ+ tenant may also be vulnerable to harassment by co-tenants, which may compel them to leave the premises even if no alternative premises are available to them. LGBTIQ+ Sri Lankans are also vulnerable to various economic pressures which may cause rent to fall into arrears.</p>	<p>without unnecessary surveillance or interference by landlords and other co-tenants of each tenant’s right to privacy and adequate housing.</p> <ul style="list-style-type: none"> <li>• Expand the powers of locally constituted Rent Boards under the Rent Act to hear and determine complaints by parties to tenancy agreements based on administrative inquiries subject to appeal in court.</li> <li>• Confer power on Rent Boards to penalise landlords who forcibly evict or arbitrarily interfere with the privacy of a tenant.</li> <li>• LGBTIQ+ community organisations should explore the development of tenant networks, to connect LGBTIQ+ Sri Lankans seeking tenancy to rent premises together.</li> <li>• Define duties of protection falling on landlords regarding harassment of tenants by co-tenants.</li> <li>• Such organisations should also explore developing toolkits and guidelines on</li> </ul>

Contd.

<sup>77</sup> See, Rent Act, No. 7 of 1972, s 15 (as amended).

<sup>78</sup> See, Rent Act, No. 7 of 1972, s 38 (as amended).

<sup>79</sup> Centre on Housing Rights and Evictions, An Introduction to Housing and Land Laws in Sri Lanka (2007), p. 13 (hereinafter, COHRE).



Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Legal security of tenure</b>			
			strategies to tackle issues faced by members of such networks in seeking and maintaining tenancy agreements.
	<p>Occupants of State land are highly vulnerable to arbitrary or unfair eviction by State authorities under the State Land (Recovery of Possession) Act.<sup>80</sup></p> <p>State authorities may seek the ejectment of any unauthorised occupants of State land; authorities are not required to provide occupants with a hearing before initiating procedures against them; authorities are not required to justify a purpose for which an ejectment is being sought; the only defence an occupant may raise in court is that they have a valid permit to occupy the State land, and no appeal lies against a Magistrate's determination as to that fact; even though the Act defines the authorities competent to initiate proceedings under the Act, in practice virtually any authority could seek</p>	<p>Many underserved communities esp. in urban settlements are in unauthorised occupation of State land, and the use of this Act in ejecting them (sometimes overnight) is well documented.<sup>81</sup> LGBTIQ+ Sri Lankans are also invariably part of such communities and are presumably affected by such evictions. However, in literature discussing forcible evictions in Sri Lanka, the particular impact of such evictions on LGBTIQ+ Sri Lankans is not discussed in detail.</p> <p>Deprivation of property/housing by the State for legitimate needs requires adequate safeguards to prevent abuse of power and discretion. However, the State Land Recovery of Possession Act would not satisfy this requirement considering the multiple ways in which it favours repossessing</p>	<ul style="list-style-type: none"> <li>• Steps should be taken by LGBTIQ+ community-based organisations to study the impact of forcible evictions from State land on LGBTIQ+ Sri Lankans (esp. in underserved urban communities).</li> <li>• Repeal the State Land (Recovery of Possession) Act and replace it with a law that more appropriately balances the need for expeditious repossession by the State of State lands with the right to adequate housing of all Sri Lankans, including those in unauthorised occupation of State land.</li> <li>• Revisit the exclusion from the operation of the Prescription Ordinance<sup>84</sup> of State land, to protect occupants from being removed from State lands they have occupied over long periods of time</li> </ul>

Contd.

<sup>80</sup> See, State Lands (Recovery of Possession) Act, No. 7 of 1979 (as amended).

<sup>81</sup> See, e.g., Michael Collyer, Kopalapillai Amirthalingam and Danesh Jayatilaka, 'The right to adequate housing following forced evictions in post-conflict Colombo' (ICES, January 2017), available at: [http://ices.lk/wp-content/uploads/2017/01/Collyer-Amirthalingam-and-Jayatilaka\\_Forced-Evictions\\_PDF.pdf](http://ices.lk/wp-content/uploads/2017/01/Collyer-Amirthalingam-and-Jayatilaka_Forced-Evictions_PDF.pdf) (accessed 22.12.2020)

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Legal security of tenure</b>			
	<p>the ejection of an occupant under the Act.<sup>82</sup></p> <p>The operation of the law favours State authorities to such an extent that even occupants of private land can sometimes become vulnerable to unfair eviction.<sup>83</sup></p>	<p>authorities over allegedly unauthorised occupants. These gaps would make LGBTIQ+ Sri Lankans occupying State land particularly vulnerable to sudden eviction, especially on an ad hominem basis.</p>	<p>without interruption by the State.</p> <ul style="list-style-type: none"> <li>• Ensure that ongoing measures to relocate unauthorised occupants of State land are carried out progressively and equitably in relation to all such communities.</li> <li>• Ensure that wholesale relocation or eviction of large segments of settlement communities for the sake of specific development projects are legally defined as arbitrary, except in cases of most urgent necessity.</li> </ul>

82 See *Watawala v. Karunathilaka* Supreme Court, SC Appeal 31/2009, decided 06.07.2009, where the Court upheld nearly 50 applications for ejection filed by the Board of Investment, even though that board is not a competent authority within the meaning of the Act

83 See, for example, *Gunarathne v Ganesapillai* Kalipillai Court of Appeal, CA (PHC) 141/2015, decided 26.02.2020, pp. 6-7.

84 See, Prescription Ordinance, No. 22 of 1871, s 15.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Availability of Services</b>			
<p>Adequate houses containing certain facilities essential for health, security, comfort and nutrition are available.<sup>85</sup></p>	<p>No building may be occupied unless a 'Certificate of Conformity' has been issued in respect of it;<sup>86</sup></p> <p>However, different standards of conformity defined by different authorities may apply to buildings depending on the legal scheme that applies to it;</p> <p>The most modern and comprehensive building standards obtain under the Urban Development Authority law; however, they apply only to a limited number of buildings;</p> <p>Standards applicable under the Housing and Town Improvement Ordinance of 1915 apply broadly to all buildings not governed by the UDA; however, they are obsolete and are not centred on standards relevant to the human right to adequate housing;<sup>87</sup></p> <p>Building standards can also be varied by local authorities; in some situations, a Chairperson of a local authority may impose compliance requirements on a case-by-case basis;</p>	<p>LGBTIQ+ Sri Lankans are often disadvantaged economically, through disrupted education, employment discrimination, or even mental or physical health issues. As such, LGBTIQ+ Sri Lankans can usually only afford housing at the cheaper end of the market.</p> <p>Residential spaces with extremely poor standards of hygiene, security, and availability of essential amenities are widely available for rent in Sri Lanka, especially in urban areas. This indicates both poor enforcement of building standards as well as the need to upgrade them to suit modern expectations of adequate housing.</p> <p>At the same time, inadequate building standards and their weak enforcement allow poor-quality housing to flood the market which, in turn, drives up the value of housing offering even the most basic amenities. This relationship between poor building standards and the high cost of basic housing means</p>	<p>Review building standards for residential premises, with consideration given to international standards applicable to the right to adequate housing, along with broad-based community consultations of cross-sections of Sri Lankan society, ensuring maximum inclusivity.</p> <p>Ensure that building standards are generally applicable Island wide, with powers conferred on local authorities to deviate from such standards, according to specific procedures, based on adequate community consultations, and reasons recorded justifying such deviations.</p> <p>Adopt measures to prevent non-compliant constructions from entering the housing market, including by implying compliance with minimum standards of adequacy into contracts of sale and tenancy of residential premises.</p> <p>Empower local Rent Boards to receive complaints of sub-standard housing from existing tenants and to arbitrate adjustments in</p>

Contd. 

<sup>85</sup> CESC, GC 4, para 8(b).

<sup>86</sup> See, Housing and Town Improvement Ordinance, No. 19 of 1915, s 15 and Urban Development Authority Law, No. 41 of 1978, s 8K.

<sup>87</sup> SEVANATHA, 'Regulatory Guidelines for Urban Upgrading: Case Study of Colombo, Sri Lanka' (May 2001), available at: [https://assets.publishing.service.gov.uk/media/57a09df1e5274a27b2001b27/R7850\\_SEVANATHA\\_RGUU1.pdf](https://assets.publishing.service.gov.uk/media/57a09df1e5274a27b2001b27/R7850_SEVANATHA_RGUU1.pdf) [accessed 29.12.2020]; see also, National Housing Policy (2016), p. 44.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Availability of Services</b>			
	<p>At the same time, the key provisions enforcing building standards make no distinction between occupying a building not certified for conformity and allowing such a building to be occupied. Thus, a tenant occupying such a building would be as liable under these provisions as the landlord who allowed their occupation.</p> <p>Rent law in Sri Lanka does not impose minimum standards of amenities and services to be provided by landlords in premises – however, no landlord may in any way discontinue or withhold or fail to repair any amenities previously provided for by the tenant, including any “essential supply or service”, which includes water, gas, electricity, lights, sanitary services etc.<sup>88</sup></p> <p>The Rent Act also enables a tenant to complain to locally constituted ‘Rent Boards’ about the discontinuation of such amenities or services, and any order made by such Rent Board would be binding on the landlord.<sup>89</sup></p>	<p>that people of lower socioeconomic backgrounds are systematically excluded from adequate housing or face disproportionate burdens in trying to afford them.</p> <p>On the other hand, imposing the same level of liability on the tenant and the landlord for occupying premises without a Certification of Conformity discourages such tenants from seeking legal action against premises with inadequate amenities.</p>	<p>agreements between them and their tenants where necessary to ensure satisfaction.</p>

Contd. 

<sup>88</sup> See, Rent Act, No. 7 of 1972, s 15 (as amended).  
<sup>89</sup> See, Rent Act, No. 7 of 1972, s 13 (as amended).

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Availability of Services</b>			
	<p>Note that these provisions apply only to amenities and services previously provided to the tenant by the landlord; they do not impose obligations on all landlords to provide such amenities to all their tenants.</p> <p>At the same time, as mentioned before, the Rent Act, as amended, excludes a “large number of premises from the purview of the Rent Act”<sup>90</sup>, including protection against ejection.</p>	See above	<p>Reform rent law to ensure the applicability of the Rent Act to all rented residential premises.</p> <p>Reform s 29 of the Rent Act, which provides for the system of oversight by a Rent Board over tenancy agreements applicable within its locality, to require all premises available for rent to be registered with the Rent Board in advance; to ensure that only premises satisfying minimum standards are registered by the Rent Board; to ensure that no premises are rented out or offered for renting out without prior registration; to empower the Rent Board or its officers to visit and inspect any rented residential premises at any time on the invitation of the tenant .</p> <p>Reform the provisions of the Rent Act which define standard rent to ensure that premises qualifying for the minimum rate applicable also satisfy minimum standards of adequacy.</p>

<sup>90</sup> COHRE, P. 13.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Affordability: Financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised<sup>91</sup></b>			
<p>The government provides establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs.</p>	<p>State-provided housing subsidies and financing exists in Sri Lanka, but their structure and availability seems to be based on Cabinet decisions rather than legislation; this means the system of housing subsidies and financing changes over time especially in response to changes in government and availability of funds. The qualifying criteria for subsidised housing or concessionary financing schemes are not directly accessible in relevant official websites; some recent schemes, such as the “Sonduru Piyasa Loan Scheme” available in 2018, stipulated the existence of a “Genuine Housing Requirement” as a condition for eligibility.<sup>92</sup></p>	<p>Given the various economic vulnerabilities already highlighted, LGBTIQ+ Sri Lankans are in need of subsidies and financing facilities to solve their housing needs. However, the lack of subsidies and easy-to-understand information prevent their access to such services.</p> <p>Qualifying criteria if not drafted carefully with adequate guidelines to service providers, can lead to discrimination against LGBTIQ+ Sri Lankans. Criteria such as ‘genuine housing requirement’ should be qualified to ensure they are not weaponised against vulnerable groups like LGBTIQ+ Sri Lankans seeking access to housing.</p>	<ul style="list-style-type: none"> <li>• Relevant Ministry should collate data relating to State-provided financing and subsidy schemes in a database covering the results, reasons for granting/refusing, and demographics of each application for housing.</li> <li>• Relevant Ministry should develop and adopt guidelines on how such schemes are granted, elaborating on considerations to be relevant or avoided in granting or refusing such requests.</li> <li>• LGBTIQ+ community organisations should submit appropriately drafted RTI requests to state-provided housing financing schemes and subsidies including, among others, State banks and local authorities, to ascertain common reasons and demographics of applicants who receive or are refused financing or subsidy requests.</li> <li>• LGBTIQ+ community organisations should explore the possibility</li> </ul>

Contd.

<sup>91</sup> CESCR, GC 4, para 8(c).

<sup>92</sup> ‘Sonduru Piyasa Housing Loan Programme’, Government Information Centre [14.09.2018] available at: <http://www.gic.gov.lk/gic/index.php/en/component/info/?id=2394&task=info> [accessed: 24.12.2020]; see also, ‘Granting housing loans to Low and lower middle Income families’ Government Information Centre [14.09.2018] available at: <http://www.gic.gov.lk/gic/index.php/en/component/info/?id=666&catid=25&task=info> [accessed: 24.12.2020]

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Affordability: Financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised</b>			
			<p>of submitting similar RTIs to NGOs and private banks providing housing financing services.</p> <ul style="list-style-type: none"> <li>LGBTIQ+ community organisations should encourage and financially support legal challenges to discriminatory decisions relating to subsidies and housing financing services.</li> </ul>
	<p>The Land Development Ordinance authorises Government Agents (District Secretaries) to alienate State land to any citizen through a permit. Any citizen may apply for a permit to occupy State land. The 'Land Kachcheri' exercises discretion in processing the application. However, the Ordinance does not specify any criteria on which the GA may base their decision to issue such a permit, implying broad discretionary power in such decisions. The Land Commissioner may vary a decision by a GA.<sup>93</sup></p>	<p>The life facts of an average LGBTIQ+ Sri Lankan, as ascertained through various sources like applications, interviews and observations obtained by local officers, may not meet expectations of GAs or even Commissioners, without the applicant necessarily being undeserving themselves. Marital status, gender expression, types of employment etc., as applicable to an LGBTIQ+ applicant, may influence local authorities to not consider them to be issued a land permit.</p>	<ul style="list-style-type: none"> <li>Every issuance of a land permit or refusal of an application should always be accompanied with recorded reasons explaining the final decision to issue or refuse.</li> <li>All applications should be tracked in a database collecting details on the result of the application, the demographic details of the applicant, and the reasons for refusal. The database should be publicly available.</li> <li>Relevant Ministry should develop and adopt guidelines on how land permits may be issued to applicants, elaborating on what considerations are to be relevant and which are to be avoided when granting or refusing applications.</li> </ul>

Contd. 

<sup>93</sup> See, Land Development Ordinance, No. 19 of 1935, Chapter III (as amended), 4.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Affordability: Financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised</b>			
			<ul style="list-style-type: none"> <li>• LGBTIQ+ community organisations should encourage and financially support legal challenges to decisions relating to land permit applications by LGBTIQ+ Sri Lankans.</li> </ul>
	<p>Obtaining a mortgage involves a whole series of documentation requiring professional expertise which discourages many from trying to obtain a mortgage. Income certificates, tax certificates, title clearance, valuation certificate, planning approval, contract document are some of the documentation required to obtain a housing loan.<sup>94</sup></p> <p>Given that “70% of the country’s population is around/below the mean income levels”, a large percentage of the population belong to the “non-bankable sector”<sup>95</sup></p>	<p>Many LGBTIQ+ Sri Lankans who may benefit from investing or obtaining a mortgage to fulfil their housing needs may be discouraged from considering such an option due to a lack of information and assistance on navigating relevant formalities.</p>	<ul style="list-style-type: none"> <li>• LGBTIQ+ community organisations should provide information and coordinate assistance clinics for members of the community in gaining awareness of such options and pursuing and planning for them.</li> <li>• LGBTIQ+ community organisations should conduct research, advocate for and spread awareness on cooperative financing schemes that may allow members of the LGBTIQ+ community to invest in housing solutions for themselves collectively; this may be especially useful for LGBTIQ+ Sri Lankans advancing in age.</li> </ul>
<p>Tenants should be protected by appropriate means against unreasonable rent levels or rent increases.</p>	<p>The rent applicable to residential premises is defined with reference to the annual assessment value of the building by the relevant local authority or as an amount fixed by the Rent Board of that locality.<sup>96</sup></p>	<p>Many LGBTIQ+ Sri Lankans may be on the lower end of the socioeconomic spectrum due to the various disadvantages stemming from stigma and discrimination and as such be prone to homelessness; these vulnerabilities may cause rent to fall in arrears sometimes.</p>	<ul style="list-style-type: none"> <li>• Reform rent law to ensure the applicability of the standardised rent provisions in the Rent Act to all rented residential premises.</li> <li>• Reform the Rent Act’s provisions defining standardised rent to ensure that premises qualifying for the minimum rate applicable</li> </ul>

Contd.

<sup>94</sup> National Housing Policy (2016), p. 42.

<sup>95</sup> Conference Proceedings, National Housing Symposium 2011 [22-23.3.2011, Sri Lanka Foundation Institute], p. 19

<sup>96</sup> See, Rent Act, No. 7 of 1972, s 4 [as amended].

<sup>97</sup> See, Rent Act, No. 7 of 1972, s 5 [as amended].



Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Affordability: Financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised</b>			
	<p>Increasing rent beyond the amounts authorised under the Act is deemed unlawful except on grounds specified in the Act itself.<sup>97</sup></p> <p>However, as mentioned before, the Rent Act, as amended, excludes a “large number of premises from the purview of the Rent Act.”<sup>98</sup></p>		<p>also satisfy minimum standards of adequacy.</p> <ul style="list-style-type: none"> <li>• LGBTIQ+ community organisations should take steps to extend the availability of any “emergency funds” to LGBTIQ+ Sri Lankans who may be facing eviction for falling in arrears of rent.</li> <li>• Such organisations should make periodically public their grant decisions under such emergency funds, publicly explaining the kinds of requests they receive for assistance and how they reason their decisions to either provide or reject grants on such requests.</li> <li>• LGBTIQ+ Sri Lankans should use the RTI Act to understand patterns of disbursements by such LGBTIQ+ organisations to members of the community.</li> </ul>
	<p>Vacant housing stock is almost as large as the housing need in Sri Lanka. While many condominium constructions have come up especially in Colombo, they remain vacant.<sup>99</sup></p> <p>Municipal Councils Ordinance empowers Councils to remit proportions of rates and</p>	<p>The existence of vacant housing stock being almost as large as the national housing need perhaps indicates the State’s failure to adequately reorient investment in housing towards segments in society who need affordable housing, including many LGBTIQ+ Sri Lankans.</p>	<ul style="list-style-type: none"> <li>• Review the provisions allowing remission of rates and taxes of untenanted premises; stipulate a specific period of time beyond which if a premise remains untenanted, rates and taxes would cease being remitted and may even increase.</li> </ul>

Contd.

<sup>98</sup> COHRE, P. 13.

<sup>99</sup> D. Vidana Pathirana, ‘Housing, MDGs and post-2015 development agenda’ DailyFT (29.12.2015), available at: <http://www.ft.lk/article/513355/Housing--MDGs-and-post-2015-development-agenda> [accessed: 24.12.2019]

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Affordability: Financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised</b>			
	taxes applicable to untenanted premises until reoccupation. <sup>100</sup>		<ul style="list-style-type: none"> <li>• Enable landlords of premises that are unoccupied over a specified period of time to rent out the premises at a rate lower than the standardised rent applicable to it by virtue of its annual assessment value.</li> <li>• Where untenanted premises are rented out below its standardised rent, remit (proportionately) the rates and taxes applicable to such premises during the pendency of such a tenancy.</li> </ul>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Non-discrimination in accessing the right to adequate housing</b>			
The right to adequate housing should not be subject to any form of discrimination, including discrimination based on sexual orientation, gender identity or expression, or sex characteristic.	Though Article 12(3) of the Constitution prohibits the denial to any person of access to shops, hotels, restaurants etc., based on prohibited grounds of discrimination such as race, religion, sex etc., this prohibition does not include buildings available in the market for sale or rent.	<p>Criteria such as sex, marital status, professional status etc. have disparate impacts on various vulnerable groups, including LGBTIQ+ Sri Lankans.</p> <p>Some of these preferences are based on arbitrary stereotypes that unfairly deprive housing for those in need of it. For example,</p>	<ul style="list-style-type: none"> <li>• Reform the Rent Act to require any specific preferences of the landlord in terms of tenants' attributes (sex, number of co-tenants etc.), including the reasons for applying them, are registered with the local Rent Board at the point of registering their premises as available for rent.</li> </ul>

100 See, Municipal Councils Ordinance, No. 29 of 1947, s 240 [as amended].

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Non-discrimination in accessing the right to adequate housing</b>			
	<p>In general, all publicly accessible classifieds for sale or rent of property include advertisements openly indicating preferences as to race, religion, sex, professional status, marital status etc. in terms of prospective buyers or tenants.</p>	<p>some landlords prefer females or married couples as tenants, implying they expect single males to cause trouble, have too many visitors, consume alcohol within premises etc. On the other hand, specifying sex as a preference may be necessary to ensure the safety of other tenants already occupying the space. However, in such situations, trans Lankans may face difficulties accessing housing no matter which sex is preferred by the landlord.</p>	<ul style="list-style-type: none"> <li>• Enable Rent Boards to prohibit landlords from registering sex preferences that are not adequately justified with reasons.</li> <li>• Prohibit advertisement of preferences which have not been specified at the point of registering the premises being advertised with the Rent Board.</li> <li>• Reform the Rent Act (esp. s 29) to enable any prospective tenant to both request to visit prospective premises for inspection and to offer tenancy to a prospective landlord in writing, including via SMS/social media message etc.)</li> <li>• Require that in all cases where tenancy is offered in writing by a tenant to a prospective landlord, the landlord accepts the first such offer received satisfying his requirements including registered preferences.</li> </ul>

Contd.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Non-discrimination in accessing the right to adequate housing</b>			
			<ul style="list-style-type: none"> <li>• Enable Rent Boards to review complaints by persons complaining of being refused tenancy on discriminatory grounds and arbitrate settlements.</li> <li>• The Relevant Ministry should create data collecting systems to monitor preferences registered by landlords, the reasons given for them, and trends in discrimination-based complaints handled by Rent Boards including their outcomes.</li> <li>• Sensitise Rent Boards to adequately arbitrate situations in which prospective trans tenants are denied tenancy on account of sex preferences.</li> </ul>

## RELATIONSHIPS



Though we take them for granted, many of our relationships, whether with family, friends, or lovers, exist in the context of society and the State. Any interference in our relationships by external parties would offend our sense of freedom, especially our freedom of association and right to privacy.

The importance to individuals of family is recognised internationally and domestically. The ICCPR recognises that, “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”<sup>101</sup> The Constitution provides that, “[t]he State shall recognise and protect the family as the basic unit of society”<sup>102</sup>.

As for all people, for LGBTIQ+ persons, too, family is of utmost importance. But the experience of an LGBTIQ+ Sri Lankan of family is made distinct by their own sexual orientation, gender identity and expression, and sex characteristic. Excluding these distinct LGBTIQ+ experiences from society’s understanding of family creates gaps between how families are seen institutionally and how they exist in reality.

Such gaps are not seen only in LGBTIQ+ relationships. In all segments of society, there are families that find themselves outside societal imaginaries of what ‘counts’ as a family. Similarly, even as cultural media reproduce the unrelenting images of the sari-wearing mother making breakfast and the tie-wearing father driving his car to work, families in ‘real life’ are far more diverse in their configurations, in their memberships, in how they came to be together and why they decided to stay. For example, difficulties faced by women-headed households in the fields of law and policy are often discussed. There is no general definition of ‘family’ found in Sri Lankan law, and this affords different institutions flexibility in recognising domestic, familial relationships as families for their purposes. But the same flexibility also allows them to discriminate relationships they are prejudiced against. This works to exclude groups generally vulnerable to stigma or discrimination from the rights and privileges usually attaching to domestic, familial relationships. Many laws relevant within this topic work based on the idea of ‘spouse’ and ‘blood relative’; people in relationships not falling within those categories are excluded from the benefits and privileges of such laws.

For example, the right to inherit a share of the property of someone you have been living with in the same household over a long period of time has little to do with whether you are related by blood or marriage to them; rather, a surviving domestic partner is entitled to a share of their deceased partner’s property because death disrupts the economic arrangements through which the partners shared their household together. To deprive them of inheritance in such a situation could potentially leave them economically precarious and even precarious. However, in law, only a spouse or blood relative can succeed to a share of the property of someone who dies without a last will; where there is no legally recognised spouse, the blood relatives would succeed to everything—even if, while she lived, the deceased partner had no real connection with her biological family.

In this section, we consider some areas relevant to individual rights that are linked to a person’s relationship status with another person. They are: living and sharing property with someone; raising children together; being protected from relationship-based violence; being sexually intimate with someone. This is not an exhaustive list of areas relevant under the broad topic of ‘Relationships’, but looking at them offers a broad enough view of how LGBTIQ+ Sri Lankans are impacted by laws that impact private relationships and police them through principles, rules, procedures etc.

<sup>101</sup> ICCPR, Article 23(1).

<sup>102</sup> Constitution of Sri Lanka, Article 27(12).

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Recognition of domestic, familial relationships</b>			
<p>Any persons of adult age who agree mutually to live in a domestic, familial relationship with each other and avail themselves of the legal recognition necessary to access rights and services relevant to routine life within such unions should be free to do so.</p> <p>(Such rights and privileges include sharing and succeeding to the property of a domestic partner; raising children together; protection from domestic and intimate-partner violence; right to be intimate with each other in private and lawfully in public).</p>	<p>A domestic, familial relationship between monogamous heterosexual couples may be afforded legal recognition if there is evidence of cohabitation and some essential marriage ceremonies at the beginning of that period of cohabitation (by operation of the presumption of marriage by habit and repute).<sup>103</sup></p> <p>In addition, heterosexual couples may avail themselves of the general Marriage<sup>104</sup> Registration Ordinance, which provides for a mechanism to register marriages, which would constitute the 'best evidence' of marriage.</p> <p>Though none of the statutes relating to marriage explicitly requires the sexes of the parties to be different as a criterion of validity of the marriage, all the statutes clearly indicate an assumption that marriage is between a husband and a wife.<sup>105</sup></p>	<p>Many individuals who wish to access rights or services essential to their domestic, familial relationships with each other are not able to do so based on their biological sex or gender identity.</p> <p>It remains untested whether persons of the same gender who cohabit together after performing some essential ceremony would be recognised as married or otherwise afforded parity with married people by virtue of their domestic, familial relationship. It does however seem highly unlikely. There are many same gender couples in Sri Lanka who live in cohabitating relationships openly within their immediate communities.</p> <p>The Marriage Registration Ordinance does not explicitly require that a couple be of different/opposite sexes, but in practice the decision of the marriage registrar would prevail unless legally challenged. For example, at least one marriage is known to the authors between a cis woman and a</p>	<ul style="list-style-type: none"> <li>Reform the law to ensure that the status of individuals cohabiting with each other with a demonstrable intention of living together in a domestic union is recognised, so they are not discriminated by virtue of their spousal status when it comes to enjoying fundamental rights or accessing essential services alone and/or in union with their partner.</li> </ul>

Contd.

103 Sharya Scharenguivel, 'Reforming the Marriage Laws of Sri Lanka: A Plea for the Incorporation of International Standards' (2010) 2010 Int'l Surv Fam L 367, 376. 102 Constitution of Sri Lanka, Article 27(12).  
104 See, in general, Marriage (Registration) Ordinance, No 19 of 1907 [hereinafter, MRO]

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Recognition of domestic, familial relationships</b>			
		<p>trans man, which was registered without incident by the registrar upon the production by the man of his Gender Recognition Certificate. However, the same couple faced difficulties years later in the local police station when their marriage certificate was disbelieved by the Officer in Charge.</p>	
	<p>Lack of consent of the parties to a marriage does not seem to be a ground for nullity of the marriage.<sup>106</sup></p>	<p>Many adult LGBTIQ+ Sri Lankans are forced into marriage against their wishes through coercion.<sup>107</sup></p>	<ul style="list-style-type: none"> <li>• Parliament should enact the grounds for voidability of a marriage, e.g. as found in the Matrimonial Causes Bill proposed by the Law Commission of Sri Lanka.<sup>108</sup></li> <li>• Parliament or civil law courts should make provision for reparations to be paid by parents with means to compensate the injury of forcing their adult offspring into marriage without their consent.</li> </ul>

105 See, e.g., MRO, s 16; Matrimonial Rights and Inheritance (Jaffna) Ordinance, No 1 of 1911, s 3 (hereinafter, JMRO); Marriage and Divorce (Muslim) Act, No 13 of 1951, s 17(2) (hereinafter, MMDA); Marriage and Divorce (Kandyan) Act, No 44 of 1952, s 5 (hereinafter, KMDA).

106 See, e.g., RW Lee, An Introduction to the Roman-Dutch Law (Clarendon Press 1919) 99; but see, *Pieris v Pieris* [1978-79] 2 Sri.L.R. 55, where the Court of Appeal mentions obiter that 'duress' is a ground for voiding a marriage if sued for; no other cases voiding a marriage for duress was found in any of the law reports available in online databases. A report from WHO claimed, citing no authorities, that, "Sri Lankan courts have on numerous occasions ruled non-consensual marriages that were forced on girls by their parents to be invalid." See, 'Child, early and forced marriages in 37 Asia-Pacific Countries' [Inter-Parliamentary Union and World Health Organisation, 2016], 118, available at: <https://apps.who.int/iris/bitstream/handle/10665/246283/9789241565042-eng.pdf> [accessed 17.12.2020]. The Law Commission of Sri Lanka in 2007 observed grounds of "voidability" are not expressed in any Sri Lankan statutes. See, Law Commission of Sri Lanka, 'Report of the Law Commission on the Proposed Matrimonial Causes Act' [2007], available at: [http://lawcom.gov.lk/web/images/stories/reports/draft\\_matrimonial\\_causes\\_act\\_2007.pdf](http://lawcom.gov.lk/web/images/stories/reports/draft_matrimonial_causes_act_2007.pdf)

107 Equal Ground et al., 'Human Rights Violations Against LGBT People in Sri Lanka: A Shadow Report submitted for the Consideration of the 110th Session of the Human Rights Committee' [December 2013], p. 11, available at: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT\\_CCPR\\_ICO\\_LKA\\_15986\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf)

108 See note above.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Accessing legal privileges necessary for routine life within a domestic, familial relationship</b>			
<p>Persons in domestic, familial relationships with each other should be able to succeed to a share of their partner's property on such partner's passing.</p>	<p>Intestate succession to property is only possible if a person is either related by marriage or blood to the deceased person.<sup>109</sup> However, where a person has cohabited with the deceased on a long-term basis and is of a different sex, there would a presumption of marriage by habit and repute in their favour (provided there is evidence of some essential matrimonial ceremonies)<sup>110</sup></p>	<p>Many LGBTIQ+ individuals carry on relationships with their lovers over long periods of time in the same household, wherein they share their incomes and belongings, and purchase various property together; however, in the event of intestacy, when a partner of such a domestic relationship passes away, their family members have preferential rights to succeed to such property. Partners who lived as homemakers with the deceased are not identified as a surviving spouse with inheritance rights.</p>	<ul style="list-style-type: none"> <li>• Reform the law to ensure that individuals cohabiting with each other with a demonstrable intention of living in a domestic union are not discriminated by virtue of their marital status in succeeding to a share of their partner's property on the passing of that partner, in a manner that protects interests of others involved with the deceased person, especially as dependents or joint-homemakers.</li> </ul>
	<p>Anyone may succeed to the property of a deceased person if a Will has been executed prior to their death;</p>	<p>A Will would be an ideal legal tool for many LGBTIQ+ Sri Lankans in long-term relationships that are not yet amenable to formal recognition; however, the execution of Wills and Last Testaments tend to be an expensive process that may exclude LGBTIQ+ Sri Lankans of poorer socioeconomic backgrounds.</p>	<ul style="list-style-type: none"> <li>• LGBTIQ+ organisations should create awareness and provide support to LGBTIQ+ Sri Lankans who may be interested in executing a Last Will and Testament in relation to their property.</li> <li>• Relevant Ministry should review the laws and procedures applicable to testation with a view to reducing any prohibitive costs, especially wherethey have becomeobsolete in the 21st century.</li> </ul>

Contd. ➔

109 See, generally, Matrimonial Rights and Inheritance Ordinance (General), No 18 of 1923, Part III.  
110 See, cited above, Sharya Scharenguivel, idem.



Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Accessing legal privileges necessary for routine life within a domestic, familial relationship</b>			
			<ul style="list-style-type: none"> <li>• Improve access to justice (as discussed elsewhere in the report) especially in terms of probate proceedings.</li> </ul>
	<p>Under s 544 of the Civil Procedure Code, any person over sixteen years of age can nominate another person to be entitled to receive the certain types of assets they may have (funds in a bank; insurance policy; shares in a company, etc.).<sup>111</sup></p>	<p>This provision greatly relaxes the strict need for a Last Will; since a nomination under s 544 overrides a Last Will, LGBTIQ+ Sri Lankans who may not otherwise be able to afford to execute a Last Will may nominate their unmarried life-partner to receive, e.g., their savings upon death without much hassle.</p>	<ul style="list-style-type: none"> <li>• LGBTIQ+ community organisations should raise awareness among the community about this option and its legal implications.</li> </ul>
	<p>A spouse succeeds automatically, at least during their lifetime, to any (State) land alienated to a person through a 'permit' under the Land Development Ordinance.<sup>112</sup></p>	<p>As mentioned above, LGBTIQ+ individuals may carry on relationships with their lovers over long periods of time in the same household, which may in rare occasions be built on State land obtained by the deceased partner; however, upon their passing away, their family members have preferential rights to 'succeed' to such property. Partners who lived as homemakers with the deceased person in that home, do not enjoy any inheritance rights rendering them homeless.</p>	<ul style="list-style-type: none"> <li>• Reform the law to ensure that individuals cohabiting with each other with a demonstrable intention of living in a domestic union are not discriminated by virtue of their marital status in succeeding to their deceased partner's legal interests in State land (in a manner that protects interests of others involved with the deceased person, especially as dependents or joint-homemakers).</li> </ul>

Contd.

111 See, for an informative article on nomination law from a former Insurance Ombudsman of Sri Lanka, <http://www.ft.lk/article/49083/-Nominations--in-bank-accounts--Think-before-you-ink>

112 See, Land Development Ordinance, No 19 of 1935, s 48A(1) [as amended].

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Accessing legal privileges necessary for routine life within a domestic, familial relationship</b>			
	Only relatives by blood can be nominated by a permit-holder to succeed to State land alienated to them under the Land Development Ordinance. <sup>113</sup>	See above.	<ul style="list-style-type: none"> <li>Reform the law to ensure that individuals cohabiting with each other with a demonstrable intention of living in a domestic union are not discriminated by virtue of their marital status in succeeding to their deceased partner's legal interests in State land (in a manner that protects interests of others involved with the deceased person, especially as dependents or joint-homemakers).</li> </ul>
	When a tenant dies, the general rule (at common law) is that the tenancy terminates, regardless of who else is living in the rented home. <sup>114</sup> However, under the Rent Act, a surviving spouse, child, or unmarried sibling who lived in the rented premises for at least a period of six months before the tenant's death, is deemed to be a tenant themselves after the death.	LGBTIQ+ individuals may be in relationships with their lovers over long periods of time in the same rented premises; however, upon their tenant partner's passing away, they will not have any legal right to be deemed a tenant of the premises they had been sharing with the deceased partner until then.	<ul style="list-style-type: none"> <li>Reform the law to ensure that individuals cohabiting with each other with a demonstrable intention of living in a domestic union are not discriminated by virtue of their marital status in succeeding to their deceased partner's tenancy agreement (in a manner that protects interests of others involved with the deceased person, especially as dependents or joint-homemakers).</li> </ul>
A person's lack of spousal status to a deceased intimate partner should not strip them of their right and duty to administer the	In Sri Lanka, the duty to bury the body of a deceased person is coterminous with the right to administer their estate. <sup>115</sup>	LGBTIQ+ individuals may carry on relationships with their lovers over prolonged periods and may be privy to their special preferences of being	<ul style="list-style-type: none"> <li>Provide a simpler, more inexpensive procedure than testation to enable a person to nominate the person of their choosing to oversee</li> </ul>

Contd.

113 See, Land Development Ordinance, No 19 of 1935, s 51, read with Rule 1 of Schedule III thereto.

114 COHRE, p. 27.

115 See, Somaratne v Luwis Nona [2002] 2 Sri L R at 376.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Accessing legal privileges necessary for routine life within a domestic, familial relationship</b>			
deceased person's last rites according to the latter's wishes.	<p>When a person passes away without a Will, their surviving spouse (widow/widower) is entitled is deemed to be the preferred option by the Court for appointment as the administrator of the estate.<sup>116</sup></p> <p>In the issuance of death certificates, the law privileges relatives over others by recognising certain rights as well as duties.<sup>117</sup></p>	disposed of upon death; however, upon the passing of such a lover, surviving partner will not have any legal right to take possession of the body of the deceased and dispose of it according to the deceased person's wishes (unless the deceased partner has left a will).	matters relating to the disposal of their body upon death.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Raising Children</b>			
The freedom to adopt children alone or in union with others is ensured to everyone equally subject only to the best interests of the child.	Any person may adopt individually <sup>118</sup> ; but no two persons may adopt jointly unless they are spouses. <sup>119</sup>	LGBTIQ+ Sri Lankans who wish to adopt and parent a child or children are doomed to be single parents or, if they are part of an intimate relationship, to exclude their partner from the parental role which they would otherwise prefer to share.	<ul style="list-style-type: none"> <li>Review the Adoption Ordinance; enable cohabiting partners to adopt children subject to the same systems of assessment that single and married adopters are subjected to (ensuring always that the best interests of the child are the paramount consideration).</li> </ul>
	The Adoption Ordinance prohibits the adoption by a man of a female child.	This provision seems to be premised on gender stereotypes such as the notion that all men are attracted to the opposite sex and that all men are likely to sexually abuse girl-children etc.	<ul style="list-style-type: none"> <li>Review the Adoption Ordinance.</li> </ul>

Contd.

116 See, Civil Procedure Code, s 523; see also, In re intestacy of Ukku Banda, deceased [1900] 4 NLR 257, 260.

117 See, Births and Deaths Registration Act, s 29/s 42.

118 Adoption of Children Ordinance, No. 24 of 1941 [as amended], s.2(1).

119 *ibid.*, s.2(2).

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Raising Children</b>			
	On application to Court for an adoption order, a Guardian ad Litem is appointed by the Court to cause a report to be made on the suitability of the applicant to adopt the child.	Device of Guardian ad Litem can expose a LGBTIQ+ Sri Lankan's attempt at adoption to scrutiny of a third party.	<ul style="list-style-type: none"> <li>• The relevant Ministry should conduct sensitivity trainings for officers (usually probationary officers) who perform the duties of a Guardian ad Litem.</li> <li>• The relevant Ministry should issue inclusive guidelines on evaluating the suitability of granting adoption orders that focus on the best interests of the child.</li> </ul>
Everyone should have the right to choose a partner with whom to raise a biological child, subject only to the best interests of the child and the lawfully established rights of access of the other biological parent.	A biological parent's rights relating to their child are extinguished upon adoption; <sup>120</sup> this means a person cannot adopt their unmarried same-sex partner's biological child without extinguishing the partner's biological parental rights.	There may be occasions in which, for instance, one member of a relationship would be the biological mother of her child, and would wish to grant her same sex partner parental rights as regards their child in recognition of their partnership in bringing the child up together; under the law, the other partner may obtain an adoption order in her favour, but only by extinguishing the maternal rights of the biological mother with whom she is an intimate partner.	<ul style="list-style-type: none"> <li>• Review the Adoption Ordinance; enable any person to adopt the biological child of their cohabiting partner where the latter consents to the same (ensuring always that the best interests of the child are the paramount consideration, while the rights of the other biological parent are also considered).</li> </ul>
Assistive Reproductive Technologies (ART).	The field of medicine is virtually unregulated; draft laws have been proposed but have not progressed far beyond the relevant expert committee stages.	ART is particularly relevant for LGBTIQ+ Sri Lankans who wish to raise a child of their own (as far as possible).	<ul style="list-style-type: none"> <li>• LGBTIQ+ community organisations should research and advocate for the adoption of supportive legislation necessary for ART</li> </ul>

120 See, *Milton v Baby Nona and others* [1985] 1 Sri.L.R. 212..

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Raising Children</b>			
	<p>However, these services are currently available in Sri Lanka, albeit only through private healthcare institutions. A provisional Code of Practice adopted by the Sri Lanka Medical Council in 2005 is the only regulation available; however, it is a voluntary code of self-regulation. Code clearly assumes that all seekers of ART services are married, heterosexual couples. There are no laws in place in Sri Lanka to grant parental orders on persons who reproduce through surrogacy arrangements.</p>		<p>being made available as a solution LGBTIQ+ parenting.</p>
Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Intimate partner violence (IPV) and domestic violence</b>			
<p>The recognition of the distinct nature of IPV and domestic violence.</p>	<p>The Prevention of Domestic Violence Act, No. 34 of 2005 (PDVA), provides special protective measures and remedies to be resorted to in situations of domestic violence.</p>	<p>Some LGBTIQ+ Sri Lankans, just as any other Lankan, are susceptible to intimate partner violence whether with cohabiting partners or non-cohabiting partners; though the provisions of PDVA, as they relate to cohabiting partners, are sex neutral, there may be assumptions of</p>	<ul style="list-style-type: none"> <li>Ministry of Justice should issue a Circular stipulating the executive interpretation of the PDVA to include all intimate cohabiting relationships irrespective of the sexual orientation, gender identity or expression, or sex characteristic of members of such partnerships.</li> </ul>

Contd. 

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Intimate partner violence (IPV) and domestic violence</b>			
		inapplicability of the law to relationships between LGBTIQ+ individuals.	<ul style="list-style-type: none"> <li>• Support by LGBTIQ+ organisations of networks of LGBTIQ+ communities that may share legal awareness and link victims to organisations that may coordinate support responses on behalf of them, encouraging them to avail themselves of the provisions of the PDVA.</li> <li>• Strengthen and equip mental health services to address underlying causes of intimate partner violence.</li> </ul>
Legal recognition of IPV and domestic violence encompasses, not only physical violence, but also sexual violence, emotional or psychological abuse and controlling behaviours. <sup>121</sup>	The PDVA covers physical violence, sexual violence (as defined in Chapter XVI of the Penal Code) and emotional abuse, but does not extend to controlling behaviours. <sup>122</sup>	LGBTIQ+ Sri Lankans are vulnerable to all forms of intimate partner violence; they are particularly susceptible to controlling behaviours, esp. through blackmail and threats of exposure to family, friends and workplaces. <sup>123</sup>	<ul style="list-style-type: none"> <li>• Expand the scope of the term 'domestic violence' to include controlling behaviours.</li> </ul>
Legal recognition of IPV and domestic violence should encompass the full spectrum of intimate and domestic relationships and is not limited to spouses only.	The PDVA definition of domestic violence includes, in addition to various degrees of relatives (such as father, mother, siblings, grandparents etc.), also the spouse, the ex-spouse or the cohabiting partner of an aggrieved person. <sup>124</sup> However, non-	Due to the culture of most unmarried adults living with their parents or other family members, most intimate relationships between LGBTIQ+ individuals will not reach a state of co-habitancy, even if they are intimate in every other sense	<ul style="list-style-type: none"> <li>• Expand the scope of the term domestic violence to include non-cohabiting partners and replace all references to the term 'domestic violence' with 'domestic and intimate partner violence.'</li> </ul>

Contd.

121 World Health Organisation, 'Understanding and addressing violence against women' (World Health Organisation 2012), available at: [https://apps.who.int/iris/bitstream/handle/10665/77432/WHO\\_RHR\\_12.36\\_eng.pdf](https://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf)

122 Prevention of Domestic Violence Act, No. 34 of 2005, s 23, definition of 'domestic violence' (hereinafter, PDVA)

123 Women and Media Collective, A Resource for Women's Rights Organizations in Sri Lanka: Engaging with Issues Faced by Lesbian Women, Bisexual Women, and Trans-Persons in Cases of Domestic Violence, Family Violence and Intimate Partner Violence (Sri Lanka, 2018), available at: A5\_WMC\_Womensorgresource\_E\_WEB.pdf (outrightinternational.org)

124 PDVA, s 23, definition of 'relevant person'

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Intimate partner violence (IPV) and domestic violence</b>			
	cohabiting intimate partners are not recognised.	and continue over prolonged periods of time; IPV is still prolonged periods of time; IPV is still possible in such relationships and partners subjected to such violence may still wish for legal protections; however, the PDVA does not extend to non-cohabiting intimate relationships.	

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Freedom of association and right to privacy in intimate relationships</b>			
The right of all adult individuals to be sexually intimate with other consenting adults acting in private should be guaranteed.	Penal Code offence on gross indecency applies explicitly to consensual acts taking place in private; <sup>125</sup> the offence of carnal intercourse against the order of nature has the same effect (though not explicit). <sup>126</sup>	The right of all adult individuals, including LGBTIQ+ Sri Lankans, to be sexually intimate with other consenting adults acting in private is denied by these offences to the extent they infringe on their freedom of association and right to privacy, especially by authorising law enforcement officials to enter private premises or monitor private communications in investigating such offences and exposing matters of utmost intimacy to publicity through investigatory and prosecutorial proceedings (such as cross examinations in court).	<ul style="list-style-type: none"> <li>• Repeal all laws criminalising sexually intimate conduct taking place between consenting adults acting in private with each other.</li> </ul>

Contd.

125 Penal Code of Sri Lanka Ordinance, No 2 of 1883, s 365A (hereinafter, SLPC).  
 126 SLPC, s 365.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Freedom of association and right to privacy in intimate relationships</b>			
		<p>Even though these offences are applicable to all Sri Lankans, they are widely believed to apply only to LGBTIQ+ Sri Lankans, thus making LGBTIQ+ Sri Lankans vulnerable to criminal enforcement against conduct non-LGBTIQ+ would be exempted from enforcement in practice even if textually the prohibitions applied to them, too.</p>	
	<p>Penal Code provisions on gross indecency and carnal intercourse against the order of nature are vague in their language, failing to provide clarity to citizens on the extent of the limitations they impose on their fundamental rights to be sexually intimate with consenting adults of their choosing.</p>	<p>The ambiguity of these provisions have been used to promote the idea that homosexual relationships are prohibited as abstract concepts and not as specific forms of conduct.</p>	<ul style="list-style-type: none"> <li>• Repeal sections 365 and 365A of the Penal Code.</li> </ul>
<p>All victims of sexual violence are entitled to the equal protection of the law.</p>	<p>The definition of rape is limited to non-consensual intercourse perpetrated on a woman by a man<sup>127</sup> ; all other contexts of sexual violence is only punishable as offences carrying lesser penalties.<sup>128</sup></p> <p>The offence of 'Grave Sexual Abuse'<sup>129</sup> in the Penal Code comprehensively covers all forms of</p>	<p>This definition of rape obscures the societal reality that people other than women can be raped; trans men who are victims of rape would be required under this definition to misgender themselves in order to seek justice; at the same time, victims of other genders who are subjected to penetrative sexual violence would be compelled to seek</p>	<ul style="list-style-type: none"> <li>• Repeal the definition of rape as provided in section 363 and substitute it with the definition for grave sexual abuse found in section 365B.</li> <li>• Ensure that the same maximum penalty that is currently applicable to rape would also be applicable under the reformed definition in s 363 of the Penal Code.</li> </ul>

Contd.



Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTQ+ Persons	Ideas for Reform
<b>Freedom of association and right to privacy in intimate relationships</b>			
	penetrative sexual violence except penile-vaginal rape but defines a lesser penalty for committing it than is applicable for penile-vaginal rape. <sup>130</sup>	justice under an offence of a lesser penalty than rape (such as grave sexual abuse under s 365B of the Penal Code).	
	The definition of the offence of rape in the Penal Code excludes from its scope non-consensual intercourse by a husband with his wife. <sup>131</sup>	As mentioned before, LGBTQ+ Sri Lankans, especially lesbian women and trans men are vulnerable to be married under duress by family members as a measure of 'correcting' their SOGIESC differences; sexual intercourse taking place within the context of such marriages would constitute rape (unless the LGBTQ+ spouse consents to intercourse prior to it). However, the marital status exception to liability for rape.	<ul style="list-style-type: none"> <li>• Reform the definition of rape in section 363 of the Penal Code to include marital rape within its scope.</li> <li>• In provision made for reparations by parents with means to compensate the injury of forcing their adult offspring into a marriage against their wishes and additional compensation for any rape they may have suffered at the hands of the spouse of such forced marriage.</li> </ul>
	Age of consent between male-female couples is 16 <sup>132</sup> ; while cases of sex between persons where both of them are not at least 18 years or older are liable for an aggravated offence under s 365 or 365A of the Penal Code.	LGBTIQ+ Sri Lankans go through the same adolescent impulses and attractions as their heterosexual and cis counterparts; however, they are imposed heavier legal burdens against their right to consent to sexual intimacy with another.	<ul style="list-style-type: none"> <li>• Reform the law to ensure that the age of consent is equal to all individuals and will not make any distinctions based on the sex of either individual involved in a sexual act with each other.</li> </ul>
Individuals accused of public indecency laws should be subject only to laws providing adequate notice of their legal obligations under such laws.	Public decency laws are vague in their language, failing to provide adequate notice to citizens on the extent of the limitations they impose on their	LGBTIQ+ individuals, especially lovers, have no frame of reference on the extent of their obligations and the limitations on the freedom of their	<ul style="list-style-type: none"> <li>• Repeal any law relating to indecency that could be considered vague or overbroad, particularly where it tends to deter</li> </ul>

127 SLPC, s 393.

128 See, e.g., SLPC, ss 345, 365B.

129 SLPC, s 365B.

130 cf. SLPC, s 393 and s 365B.

131 SLPC, s 393.

132 See, SLPC, s 363.

Contd. 

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Freedom of association and right to privacy in intimate relationships</b>			
	<p>fundamental rights to express themselves; such laws have a chilling effect on diverse expressions including expressions related to gender and sexuality ; they also make individuals vulnerable to abusive interpretations by law enforcement officials (leading to arbitrary arrests, degrading treatment and/or blackmail).</p>	<p>expression, association, and right to assembly – this is directly because the gross indecency offence is undefined in the law.</p>	<p>conduct not intended by the legislature to be criminalised.</p>
<p>Individuals accused under public indecency laws should be subject only to penalties proportionate to the gravity of their offences without discrimination based on sex or sexual orientation.</p>	<p>Heterosexual couples are routinely arrested for public indecency, as are same-sex (male) couples. However, where the former are penalised with fines under the Police Ordinance, the latter always face the risk of being charged with the non-summary offence of gross indecency, even if the conduct between the two types of couples were similar.</p>	<p>The failure to ensure that the same conduct attracts the same penalty irrespective of the sexual orientation of the ‘perpetrators’, necessarily imply a qualitative difference between perpetrators by virtue of their sexual orientation. This is known in equality jurisprudence as ‘second class treatment.’ All individuals should have the right to freely express themselves and associate others intimately in public to a certain degree.</p> <p>This right should be enjoyed by all persons equally, without disparate penalties being applied to them based on their sexual orientation.</p>	<ul style="list-style-type: none"> <li>• Define public indecency laws in sex neutral terms with reference only to adequately described physical acts to give individuals notice on the limits of their rights and the extent of their obligations.</li> <li>• Repeal all public indecency laws that fail to meet this standard.</li> </ul>

## THE ONLINE SPHERE



As of early 2020, Sri Lanka has approximately 10.1 million internet users.<sup>133</sup> The growing internet penetration and increasing reporting of social media incidents to local authorities suggest that Sri Lankans, including those of diverse SOGIE, are active users of online platforms.

While the internet is an invaluable resource to all Sri Lankans, it must be acknowledged that online platforms hold a particular importance for the LGBTIQ+ community. Research suggests that LGBTIQ+ individuals rely extensively on the digital space for various purposes including forming and maintaining relationships, accessing information about their identity and health as well as engaging in advocacy and awareness.

The distinct difference between LGBTIQ+ individuals and non-LGBTIQ+ individuals and their use of the internet is that for the latter the internet is merely a choice whereas for the former it has become a necessity. Digital spaces have been more accommodating to many LGBTIQ+ individuals than real life to express their thoughts and identities in a safe and controlled manner.

However, this increased level of anonymity and autonomy that is available online does not eliminate the increased risk of violence LGBTIQ+ individuals face in Sri Lanka. Individuals of diverse SOGIESC do experience bullying, harassment, exploitation and violence on online platforms as well. Local research reveals that 20% of the LGBTQ participants experienced or personally knew someone who has experienced violence in the physical world based on online content about their sexual orientation and gender identity while 41% had experienced 'outing' on digital platforms without their consent.<sup>134</sup> LGBTIQ+ individuals also face significant challenges in accessing legal and psychosocial support services in response to various forms of online violence. The lack of support from key stakeholders and professionals as well as the prevalence of hatred and online prejudice towards LGBTIQ+ can prevent these individuals from accessing digital spaces and social media platforms which are otherwise imperative for the needs of LGBTIQ+ individuals.

It is important now, more than ever, to bear in mind the importance of having access to safe and healthy digital spaces. Hence, the purpose of this section is to highlight the key concerns relevant to LGBTIQ+ individuals in response to various forms of online violence.

This section deals with three themes which the researchers have identified as areas that require immediate improvement namely: response to online hate speech, harassment of human rights defenders and response to image based sexual violence. The Ideal Settings are based on recommendations from a range of appropriate international bodies including recommendations from the United Nations and the Council of Europe to ensure equal rights and benefits for LGBTIQ+ individuals in digital spaces.

The analysis of the experiences of LGBTIQ+ individuals in the digital space reveal that the Government, with the support of voluntary civilian agencies, must re-evaluate existing policies, laws and procedures relevant to hate speech and other forms of online harassment to ensure LGBTIQ+ do not become vulnerable to attack in the digital landscape. In addition, along with the support of relevant stakeholders in the cyber security sector, such as the social media platforms, the Government must invest in sensitivity training for law enforcement to ensure LGBTIQ+ individuals are treated with dignity and respect when reporting incidents of online violence.

<sup>133</sup> Kemp, Simon. [2020]. Digital Sri Lanka: 2020. Data Report. <https://datareportal.com/reports/digital-2020-sri-lanka>

<sup>134</sup> Women and Media Collective. (2017). Disrupting the Binary Code: Experiences of LGBT Sri Lankans Online, available at: [https://womenandmedia.org/wp-content/uploads/2018/02/Disrupting-the-Binary-Code\\_-\\_for-web.pdf](https://womenandmedia.org/wp-content/uploads/2018/02/Disrupting-the-Binary-Code_-_for-web.pdf)

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Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Response to online hate speech based on sexual orientation and gender identity</b>			
<p>Prohibition of forms of expression, including the media and on the internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against LGBTIQ+persons.<sup>135</sup></p>	<p>Prevention of Terrorism Act (PTA) provides that, “any person who causes acts of violence or communal disharmony or feelings of ill-will or hostility between different communities” is guilty of an offence.<sup>136</sup></p> <p>The Police Ordinance also provides local police the power to arrest any person who uses “words or behaviour intending to provoke a breach of peace”.<sup>137</sup></p> <p>In 2007, Sri Lanka adopted ICCPR Act, section 3 of which is considered as an important legal tool to combat hate speech.<sup>138</sup></p> <p>Social media bans have also been utilised in 2018 &amp; 2019 as an “emergency intervention” to combat</p>	<p>Despite the existence of the PTA the ambiguous nature of the definition as well as the history of the PTA in exploiting and abusing individuals from marginalised communities prevents this Act from being effective in combating only hate speech against LGBTIQ+ individuals. Similarly, the Police Ordinance is also not widely utilised especially when it pertains to online spaces and LGBTIQ+ individuals. The lack of clear legal provisions to define and respond to hate speech, including that towards LGBTIQ+ individuals, increases the occurrence of hate speech incidents faced by the LGBTIQ+ population in Sri Lanka.<sup>140</sup></p> <p>The failure of both the law as well as those</p>	<ul style="list-style-type: none"> <li>• The Government must develop a coherent and inclusive legal framework that clearly defines and prohibits advocacy of hatred against various aspects of an individual’s identity, which should include but not be restricted to one’s gender identity, expression and sexual orientation. It is essential that the framework identifies online hate speech as an offense, regardless of the platform in which the opinion or behaviour might have been expressed.</li> <li>• The Government must invest in the continued implementation of training of law enforcement officers, especially those in</li> </ul>

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135 Council of Europe. [2010]. Recommendation CM/Rec(2010)5 on Measures to Combat Discrimination on Grounds of Sexual Orientation and Gender Identity, available at: <https://search.coe.int/cm/>  
 136 Prevention of Terrorism Act, Section 2(1) (h), available at: [http://www.vertic.org/media/National\\_Legislation/](http://www.vertic.org/media/National_Legislation/)  
 137 Police Ordinance, available at: [http://www.defence.lk/Publication/police\\_act](http://www.defence.lk/Publication/police_act)

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Response to online hate speech based on sexual orientation and gender identity</b>			
	<p>hate speech on social media platforms,<sup>139</sup> although these bans are not enacted under a specific legal provision.</p>	<p>who enforce it to identify hate speech based on gender identity and sexual orientation as offensive and as a violation of human rights poses a giant barrier in reporting and tackling incidents of hate speech faced by LGBTIQ+ individuals. Furthermore, since derogatory, misogynistic, homophobic remarks are desensitised and normalised, especially on online platforms, it becomes more challenging for both law enforcement and civil society to identify such behaviour as hostile and abusive.</p> <p>While social media bans do contain the spread of misinformation and hatred online, this 'emergency measure' should also be seen as a form of arbitrary censorship since shutting down social media platforms can also cut off LGBTIQ+ individuals from their support systems. Social media bans interfere with the work of human rights defenders online as well.</p>	<p>local authorities that are responsible for responding to online violence in particular, to attend to incidents of online hate speech encountered by LGBTIQ+ individuals with no prejudice and more sensitivity.</p> <ul style="list-style-type: none"> <li>• The Government, along with relevant local stakeholders, must consider alternatives to social media bans – such as building long-term and transparent relationships with social media platforms such as Facebook and WhatsApp to effectively monitor and tackle hate speech on a regular basis.</li> </ul>

138 Colombo Telegraph. (2019). Using ICCPR Act: HRCSL Issues Guidelines to Police on Hate Speech Law, available at: <https://www.colombotelegraph.com/index.php/using-iccpr-act-hrcsl-issues-guidelines-to-police-on-hate-speech-law/>

139 Fisher, M. (2019). Sri Lanka Blocks Social Media, Fearing More Violence. The New York Times, available at: <https://www.nytimes.com/2019/04/21/world/asia/sri-lanka-social-media.html>

140 Women and Media Collective. (2017). Disrupting the Binary Code: Experiences of LGBT Sri Lankans Online, available at: [https://womenandmedia.org/wp-content/uploads/2018/02/Disrupting-the-Binary-Code-\\_for-web.pdf](https://womenandmedia.org/wp-content/uploads/2018/02/Disrupting-the-Binary-Code-_for-web.pdf)

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Response to harassment faced by LGBTIQ+ activists and human rights defenders on online platforms</b>			
<p>The right to freedom of opinion and expression including freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.<sup>141</sup></p>	<p>The Constitution guarantees freedom of speech and expression including publication for all citizens.<sup>142</sup></p>	<p>Organisations advocating for LGBTIQ+ rights have reported incidents of intimidation, violence and discrimination on the basis of sexual orientation and gender identity – both offline and on social media platforms.<sup>143</sup></p> <p>Attacks on LGBTIQ+ activists and human rights defenders as well as the hatred and harassment towards LGBTIQ+ communities online prevent the smooth and efficient operation of such organisations and individuals. The lack of support from law enforcement, as well as social media platforms, can further discourage LGBTIQ+ activists, especially those without necessary support mechanisms, from engaging in online activism.</p> <p>This has a direct impact on the LGBTIQ+ community as a whole since online activism and discussions on social media are a primary source of knowledge and resource sharing for many LGBTIQ+</p>	<ul style="list-style-type: none"> <li>• The State must hold Sri Lanka Police accountable to oversee and handle incidents of harassment and abuse towards LGBTIQ+ individuals to ensure they are not overlooked. These stakeholders must be held responsible for efficiently responding to incidents of online violence experienced by LGBTIQ+ individuals.</li> <li>• CSOs must invest in trilingual training and resource development for LBGTQI+ activists and human rights defenders to equip them with the necessary skills and knowledge to deal with online harassment as it can reduce the likelihood of personal impact on victims while also ensuring they feel more confident and prepared during their online advocacy efforts.</li> <li>• The State must establish a clear and consistent relationship with social media platforms to ensure they uphold their community standards and support the work of local activists and human rights defenders.</li> </ul>

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141 United Nations. (1948). Universal Declaration of Human Rights, available at: [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)  
142 Parliament Secretariat. (2015). The Constitution of Democratic Republic of Sri Lanka, available at: <https://www.parliament.lk/files/pdf/constitution.pdf>  
143 Flamer-Caldera, R. (2018). Counting in LGBT. Daily Mirror, available at: <http://www.dailymirror.lk/article/Counting-in-LGBT-144350.html>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Response to harassment faced by LGBTIQ+ activists and human rights defenders on online platforms</b>			
		individuals. Due to concerns about safety and security, many advocacy strategies and community organising efforts take place on social media platforms. Hence, any attack on LGBTIQ+ activists can have a ripple effect on LGBTIQ+ advocacy and awareness in Sri Lanka.	

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Response to image based sexual violence experienced by LGBTIQ+ individuals</b>			
Legal frameworks and response mechanisms that address and respond to online harassment – including the exploitation of intimate images and videos of LGBTIQ+ individuals.	<p>Sections 286A, 286B and 286C of the Penal Code criminalise obscene publication and exhibition related to children.</p> <p>Any person committing offenses related to obscene publications or any person who abets the commission of such offences can also be prosecuted under the Obscene Publications Ordinance.<sup>144</sup></p> <p>Section 345 of the Penal Code criminalises harassment of a sexual nature using action, criminal force, words or action.</p>	<p>Gaps in the existing legal framework prevent LGBTIQ+ victims of image based sexual violence from reporting the incident. For example, the obscene publication ordinance, even though can be used to prosecute the perpetrator of the crime, can also affect the victim for producing ‘obscene’ content.</p> <p>In addition, the lack of understanding about social media, sexual expression and smart phones prevent police officers from assisting LGBTIQ+ victims of image based sexual</p>	<ul style="list-style-type: none"> <li>• The State must hold Sri Lanka Police accountable for efficiently processing cases of imaged based sexual violence by utilising the existing legal framework to prosecute perpetrators and protect victims of online violence – including LGBTIQ+ individuals.</li> <li>• The State must invest in sensitivity training in a legal and psychosocial capacity for support professionals to ensure that they respond with empathy and not judgement. These</li> </ul>

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144 Obscene Publications Ordinance. <http://www.mediareform.lk/wp-content/uploads/2020/03/164-Obscene-Publications-Ordinance-No.04-of-1927.pdf>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Response to image based sexual violence experienced by LGBTIQ+ individuals</b>			
		<p>violence with empathy and understanding.<sup>145</sup></p> <p>Despite comprehensive community guidelines of social media platforms, incidents of online violence can still be overlooked since they fail to account for cultural context. Moreover, lack of awareness about online safety and social media security among LGBTIQ+ individuals also increase their vulnerability towards image based sexual violence as well as other forms of online violence. This issue is further exacerbated by factors such as language barriers and lack of online safety education in the current ICT curriculum.</p> <p>When producing evidence through photos or videos during a case of image based sexual violence, an individual who engages in same sex intercourse can be brought under section 365 of the Penal Code as it is utilised to abuse and exploit LGBTIQ+ individuals in Sri Lanka.</p>	<p>trainings must utilise an objective approach to ensure that relevant authorities respond to these complaints in a professional manner.</p> <ul style="list-style-type: none"> <li>• The Government must hold social media platforms accountable for upholding their community standards through continuous monitoring, identification and removal of hateful content that impacts LGBTIQ+ individuals on such platforms.</li> <li>• CSOs must develop and disseminate localised resources and contextualised response mechanisms on online safety and social media security for LGBTIQ+ individuals through schools and social media platforms.</li> </ul>

145 Bratsbjerg, C. [2018]. Image-based Cyberviolence against Women and Girls in Sri Lanka: Key Findings from a Field Study in Sri Lanka, available at: <http://www.bakamoono.lk/admin/wp-content/uploads/2016/>

146 Priscilla, D. [2020]. Under the Same Rainbow: Experiences of Trans Individuals from Jaffna, available at: <http://www.bakamoono.lk/admin/wp-content/uploads/2016/06/Online-Experiences-of-Trans-Individuals-from-Jaffna.pdf>



## MEDIA



Information disseminated through the media – usually through channels such as radio, television, music, films, newspapers and others – encourage contact and communication between different groups. Media acts as a mode of education as it imparts individuals with knowledge and thereby shapes their attitudes and perspectives. However, it is important to recognise the media as a double-edged sword since the information distributed through these mediums can be both productive and harmful. This is precisely why media is a key stakeholder in increasing the awareness of LGBTIQ+ community in Sri Lanka.

While significant progress has been made in mainstream media with regard to its relationship with the LGBTIQ+ community, there are certain key areas of concern that require improvement. The arbitrary censorship of LGBTIQ+ content prevents public from increasing their awareness about issues related to the LGBTIQ+ individuals. The invisibility of key milestones in the LGBTIQ+ community and the hypervisibility of violence faced by LGBTIQ+ individuals further reinforce misinformation and stereotypes about sexual orientation and gender identity.

Since the media has a massive impact on how we understand and treat one another, it is essential to ensure that individuals who create and disseminate content are trained and sensitised to the issues and experiences of LGBTIQ+ individuals in Sri Lanka. This is necessary to prevent the possible spread of misinformation, reinforcement of stereotypes and provocations of harassment and violence. Hence, the purpose of this section is to highlight the key concerns relevant to LGBTIQ+ individuals as creators and consumers of mainstream media.

This section deals with three themes which the researchers have identified as areas that require immediate improvement to challenge the current experiences of LGBTIQ+ individuals in creating and consuming media namely: Content censorship, harassment in media and language sensitivity. The Ideal Settings have been based on recommendations from a range of appropriate international bodies including the United Nations and GLAAD to ensure equal rights and benefits for LGBTIQ+ individuals in media.

This analysis of the experiences of LGBTIQ+ individuals in the media reveals that the Sri Lanka Press Council, with the support of Ministry of Mass Media, must re-evaluate and consistently monitor existing policies, laws and procedures relevant to censorship, harassment and sensitivity to ensure they are implemented by media practitioners so that LGBTIQ+ are not portrayed in a degrading and/or subjective manner. In addition, along with the support of relevant stakeholders in the mass media sector such as the radio stations, television networks and the press council, the Ministry of Mass Media must invest in sensitivity training for media practitioners to ensure LGBTIQ+ individuals are treated with dignity and respect when reporting incidents related to this community.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Censorship of LGBTIQ+ content in local media</b>			
<p>The right to freedom of opinion and expression including freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers is ensured.<sup>147</sup></p>	<p>Freedom of the press in Sri Lanka is guaranteed by Article 14(1)(a) of the Constitution.</p> <p>Sri Lanka Press Council Law holds SLPC responsible for regulating the matters of press in Sri Lanka.<sup>148</sup></p> <p>Right to Information Act of 2016 guarantees the right of access to information and transparency.<sup>149</sup></p>	<p>Despite the absence of direct challenges in existing legal provisions, the evaluation of LGBTIQ+ content is subjected to the personal biases of relevant committee members in these key media committees. For example, a Gratiaen prize-winning local play that depicted the story of a gay man was rejected twice before it was finally approved by the public performances board.<sup>150</sup> This arbitrary denial of public productions and mid-run cancellations can prevent artists showcasing the stories of LGBTIQ+ individuals to the public.</p> <p>In terms of arts and culture, the Public Performances Ordinance does not explicitly discriminate against LGBTIQ+ individuals in issuing suitability certification of public performances.<sup>151</sup> Similarly, National Film Corporation of Sri Lanka Act does not include any provisions that explicitly discriminate LGTQI+ individuals.<sup>152</sup></p>	<ul style="list-style-type: none"> <li>• Sri Lanka Press Council must invest in the design, implementation, monitoring of sensitivity training for employees in all relevant committees to be more objective and empathetic in their decision making. The training methodology must be participatory to ensure the knowledge, attitudes and perspectives of these decision-making stakeholders and its impact towards LGBTIQ+ individuals are challenged and discussed.</li> <li>• Sri Lanka Press Council must closely monitor both the invisibility and hypervisibility of content related to LGBTIQ+ and hold mainstream media outlets accountable for their reporting.</li> <li>• CSOs working on LGBTIQ+ advocacy must liaise with mainstream media to establish an ongoing relationship and constant exchange of accurate, objective and reliable information.</li> </ul>

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147 United Nations. (1948). Universal Declaration of Human Rights, available at: [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)

148 Sri Lanka Press Council Law, available at: [http://www.commonlii.org/lk/legis/consol\\_act/slpc378283.pdf](http://www.commonlii.org/lk/legis/consol_act/slpc378283.pdf)

149 Right to Information Act of Sri Lanka. [2016]. [http://www.labourdept.gov.lk/index.php?option=com\\_content&view=article&id=176&Itemid=80&lang=en](http://www.labourdept.gov.lk/index.php?option=com_content&view=article&id=176&Itemid=80&lang=en)

150 Bemma, A. (2019). Sri Lanka's Gratiaen Prize Winning Play Put on Hold for Gay Pride. Medium, available at: <https://medium.com/@adambemmasri-lankas-gratiaen-prize-winning-play-put-on-hold-during-gay-pride-8155c01b3d84>

151 Public Performances Ordinance, available at: <https://www.srilankalaw.lk/Volume-VI/public-performances-ordinance.html>

152 National Film Corporation of Sri Lanka Act, available at: <https://www.srilankalaw.lk/Volume-VI/national-film-corporation-of-sri-lanka-act.html>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Censorship of LGBTIQ+ content in local media</b>			
		<p>However, all media content, including public performances and films, are subjected to the personal biases of the decision-making body as well as the audience. Productions can be subject to edits and rewrites which might affect the credibility and authenticity of the story.</p> <p>The failure to report key changes within the LGBTIQ+ community in mainstream media further reinforces the ignorance and stigma about gender identity and sexual orientation among the public. For example, only a few newspapers and a couple of television channels reported the repealing of section 377 and decriminalisation of homosexuality in India.<sup>153</sup> The failure to highlight such important legal and social milestones, especially in the South Asian region is a loss of key opportunities to increase the awareness and towards LGBTIQ+ individuals in Sri Lanka.</p>	

153 Sirisena, P. (2018). Indian Judgement on LGBT Rights: Can SL Follow the Same Path. Daily Mirror, available at: <http://www.dailymirror.lk/article/Indian-judgement-on-LGBT-rights-Can-SL-follow-same-path--157182.html>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Response to Harassment of LGBTIQ+ individuals in and by media</b>			
<p>LGBTIQ+ people have the right to fair, accurate and inclusive reporting of their life stories and concerns. As with all members of society, the media should treat LGBTIQ+ people with fairness, integrity and respect.<sup>154</sup></p>	<p>The Code of Ethics of the Editors Guild in Sri Lanka demands that editors adhere to accurate reporting, confidential sources and respect privacy.<sup>155</sup></p> <p>The Press Complaints Commission of Sri Lanka is a voluntary system by the press for individuals with grievances about the press to seek redress.<sup>155</sup></p>	<p>Even though the Code of Ethics of the Editor's Guild clearly states that information and images should not be obtained through intimidation or harassment or misrepresentation or subterfuge, these practices are not applied to LGBTIQ+ individuals.<sup>156</sup> In addition, existing data is inadequate and is not helpful in understanding the extent of harassment faced by journalists when reporting issues related to LGBTIQ+ individuals.</p> <p>While the Press Complaints Commission of Sri Lanka is accountable for handling the complaints regarding harassment, censorship and other issues faced by LGBTIQ+ individuals in the media,<sup>157</sup> the efficiency of this Commission in its response and redressal is unclear.</p> <p>The harassment faced by journalists who address LGBTIQ+</p>	<ul style="list-style-type: none"> <li>• Editors Guild must invest in the implementation of sensitivity training for editors to be mindful of including personal details of LGBTIQ+ individuals, by reinforcing the idea that personal details of these individuals must only be published if the author has obtained informed consent and if it is necessary and relevant to the story.</li> <li>• The Press Complaints Commission, with the support of the LGBTIQ+ activists, must be trained to ensure that complaints from affected parties, including those of diverse SOGIE, are identified, evaluated and responded with professionalism and sensitivity.</li> <li>• All media organisations must take individual responsibility for incidents of harassment and abuse towards journalists who address LGBTIQ+ issues. Such incidents must be consistently</li> </ul>

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154 National Union of Journalists. Celebrating and Supporting Lesbian, Gay, Bisexual and Transgender Members of the National Union of Journalists. NUJ: London.  
155 United Nations Development Programme. (2013). Stigma, Discrimination and Key Affected Populations: Strengthening the Role of Media Advocacy in Sri Lanka through a Critical Analysis of News Media Coverage, available at: [https://www.undp.org/content/dam/rbap/docs/Research & Publications/hiv\\_aids/rbap-hhd-2013-stigma-discrimination-and-kaps.pdf](https://www.undp.org/content/dam/rbap/docs/Research & Publications/hiv_aids/rbap-hhd-2013-stigma-discrimination-and-kaps.pdf)  
156 Verite Research. (2018). The Battle Against Homophobia in Sri Lanka, available at: <https://www.veriteresearch.org/2018/09/25/the-battle-against-homophobia-in-sri-lanka/>  
157 An article published in a local newspaper mentioned the name and even the address of a community organisation supporting the SRH of MSM creating hate speech online and offline, available at: <http://madikazemi.blogspot.com/2011/10/sri-lankan-gays-living-in-fear-after.html>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Response to Harassment of LGBTIQ+ individuals in and by media</b>			
		issues in the media is underreported. For instance, a local novelist was arbitrarily arrested for publishing a story about homosexuality and child abuse at a Buddhist temple. <sup>158</sup> This type of incident further encourages and legitimises hate crimes among civil society.	and accurately documented in order to identify various forms of objection and opposition towards LGBTIQ+ content in mainstream media.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Use of LGBTIQ+ sensitive language in media</b>			
Journalists distinguish between different viewpoints on LGBTIQ+ issues and the defamation rhetoric that fuels prejudice and discrimination while providing media coverage that allows the audience to form their own conclusions based on factual information, compelling stories and appropriate context. <sup>159</sup>	<p>The Press Council (Code of Ethics for Journalists) Rules state that every journalist must refrain from publishing or causing to be published any matter which may offend public taste or morality or tend to lower the standards of public taste or morality.<sup>160</sup></p> <p>Code of Ethics of the Editors' Guild of Sri Lanka adopted by the Press Complaints Commission of Sri Lanka states that prejudicial or pejorative references about a person's sex should not be mentioned and that a person's sexual orientation should not be revealed unless it is directly relevant to the story.<sup>161</sup></p>	Even though the local codes of ethics for media practitioners expect journalists to treat people of SOGIESC with dignity and respect, these guidelines are not practiced in reality. The tendency to use the victim's sexual orientation to sensationalise news leads is not considered as unethical. In addition, the failure to use correct terminology and the habit of reusing outdated and prejudiced language further contributes towards the existing stigma and ignorance towards the LGBTIQ+ community in Sri Lanka.	<ul style="list-style-type: none"> <li>• Press Council and Editors Guild must hold journalists accountable for reporting which violate the consent and dignity of people, including LGBTIQ+ individuals, or for producing material which is likely to lead to hatred or discrimination on the grounds of a person's SOGIE.</li> <li>• Ministry of Mass Media must invest in the implementation and consistent monitoring of sensitivity training for journalists – starting from a curricula revision in local educational</li> </ul>

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158 Colombage, Q. (2019). Sri Lankan Novelist Arrested Over Gay Buddhist Monk story. UCA News, available at: <https://www.ucanews.com/news/sri-lankan-novelist-arrested-over-gay-buddhist-monk-story/84899>

159 GLAAD. (2014). Media Reference Guide, available at: [https://www.glaad.org/sites/default/files/GLAAD\\_MRG\\_9th.pdf](https://www.glaad.org/sites/default/files/GLAAD_MRG_9th.pdf)

160 Press Council (Code of ethics for Journalists) Rules, available at: <https://accountablejournalism.org/ethics-codes/Sri-Lanka-Press>

161 Code of Ethics of the Editors' Guild of Sri Lanka, available at: <http://www.slpi.lk/wp-content/uploads/2019/05/Editors-Code-Eng.pdf>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Use of LGBTIQ+ sensitive language in media</b>			
		<p>The lack of resources and training on LGBTIQ+ sensitive media reporting from the public sector prevents a large portion of journalists from accessing resources and training that encourages ethical reporting when covering LGBTIQ+ issues. Due to the absence of mainstream sensitivity, LGBTIQ+ reporting in local media continues to be unfriendly, ignorant, insensitive and derogatory.<sup>162</sup> This mistreatment is further reinforced by the fact that LGBTIQ+ sensitive reporting is not a part of the curriculum in local journalism education institutions.</p> <p>While the accepted and appropriate local terms for gay, lesbian, bisexual, transgender and intersex are not popularly used or mainstreamed in the media in the local languages, accurate terms for queer, non-binary, pansexual and other LGBTIQ+ identities are still under debate. The uncertainty in acceptable language further influences the media's use of inappropriate terminology when referring to the LGBTIQ+ community.</p>	<p>institutions for journalists. All students must, in the least, be encouraged to use correct terminology when referring to LGBTIQ+ community.</p> <ul style="list-style-type: none"> <li>• CSOs, along with the corporation of the Ministry of Mass Media, must develop resources for media practitioners in local languages that explain and encourage the use of appropriate terminology for LGBTIQ+ individuals. Meanwhile, the Press Council and Editors Guild must censor the use of inappropriate terminology for LGBTIQ+ individuals, especially in the local languages and label it as derogatory and abusive in both mainstream and social media platforms.</li> </ul>

162 An article published in a local newspaper mentioned the name and even the address of a community organisation supporting the SRH of MSM while spreading misinformation that homosexuality is the same as paedophilia, available at: <http://madikazemi.blogspot.com/2011/10/sri-lankan-gays-living-in-fear-after.html> <http://madikazemi.blogspot.com/2011/10/sri-lankan-gays-living-in-fear-after.html>

## OFFICIAL DOCUMENTATION



In Sri Lanka, official documentation in the form of birth certificates, national identity cards (NICs) and other forms of identity are required at numerous points of daily life and to access numerous services. This includes applying for jobs; accessing financial services; seeking medical care; seeking any service from a public authority; accessing education; and interacting with law enforcement and the justice system. In short, our success in navigating large parts of daily public and social life is contingent on our official documentation.

In this Gap Analysis, we approach official documentation from the perspective that it is the fundamental right of every person to have their self-defined gender identity legally recognised in official documentation. The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity affirm that “[e]ach person’s self-defined ... gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.”<sup>163</sup> To ensure this right to legal recognition of gender identity, states must have in place procedures for modifying, upon request, the gender designations on all State-issued identity documents, including birth certificates, national identity cards (NICs), and passports, among other documents.<sup>164</sup> Because names can be a marker of gender, these procedures must also allow individuals to change their legally recognised names if they wish to do so.

In every instance where official documentation is required in Sri Lanka, a LGBTIQ+ person (and especially a transgender or gender non-conforming person) whose official documents would record the name and sex they were assigned at birth which may not match their actual name and gender identity (and gender presentation) is vulnerable to humiliation, discrimination, harassment and the prospect of violence. An inability to obtain official documents reflecting their correct name and gender designation is a major contributing factor to LGBTIQ+ Sri Lankans being unable to access healthcare, education, employment and other services, as well as being exposed to violence and other ill treatment and abuse. In effect, the lack of correct documentation forces many LGBTIQ+ Sri Lankans to live their lives without accessing services contingent on, or avoiding situations requiring, such documentation—in other words, in a different plane of socialisation to other Sri Lankans.

In this section, we summarise the junctures at which the right of every person to have their self-defined gender identity legally recognised runs against the processes of obtaining and amending official documentation in Sri Lanka. The key stakeholders relating to this section are the Department of the Registrar-General, the Department of Immigration and Emigration, the Department of Motor Traffic, the Ministry of Education, Ministry of Health, Nutrition and Indigenous Medicines, Ministry of Home Affairs and all District and Divisional Secretariats.

<sup>163</sup> Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, Principle 3 (2007), available at: [http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm)

<sup>164</sup> Office of the U.N. High Commissioner for Human Rights, Discrimination and violence against individuals based on their sexual orientation and gender identity, Principle 3(C), paras 69, 70, and 79(i), U.N. Doc.A/HRC/29/23 (4 May 2015), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/088/42/PDF/G1508842.pdf?OpenElement>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Ability of LGBTIQ+ Sri Lankans to have their gender identity legally recognised</b>			
<p>Transgender and gender non-confirming persons are able to obtain official identification documents which reflect their gender identity based on their own self-identification.</p>	<p>Transgender persons can obtain a Gender Recognition Certificate (GRC) issued by the Ministry of Health, Nutrition and Indigenous Medicine following:<sup>165</sup></p> <p>an evaluation by a Consultant Psychiatrist; certification by the same that the person “was referred for hormone therapy and the necessary surgical treatment”;</p> <p>subsequent certification that the person “underwent the gender transformation process”, and signing off by the Head of the Institution.</p> <p>The GRC can then be used to change the sex and name in the person’s birth certificate by any Registrar of Births and Deaths, and to issue a new a National Identity Card, driver’s license and passport.<sup>166</sup></p>	<p>The GRC process is accessible only to a small number of trans and gender nonconforming Sri Lankans because:</p> <p>The GRC process is not widely publicised by the authorities responsible for it (healthcare institutions and the Registrar-General’s Department) meaning that most LGBTIQ+ Sri Lankans are likely to be unaware of it;</p> <p>Consultant Psychiatrists are limited in number in Sri Lanka and not available at every hospital and clinic in the country, limiting trans persons’ access to the GRC process;</p> <p>Hormone therapy and surgical treatment impose varying and often prohibitive costs on trans persons wishing to obtain a GRC;</p> <p>The types of hormone therapy and surgical treatment required vary on the gender identity and Certain surgeries are not widely available in Sri Lanka.</p>	<ul style="list-style-type: none"> <li>• The GRC process should be revised and simplified to:</li> <li>• Remove the requirements for psychiatric evaluation and referral to and undergoing of hormone therapy and surgical treatment;</li> <li>• Provide the GRC to any applicant based simply on self-declaration of name and gender;</li> <li>• The revised GRC process should be widely publicised at public authorities relating to local government administration and healthcare to enable access for trans and gender non-conforming Sri Lankans.</li> </ul>

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<sup>165</sup> Director General of Health Services, Ministry of Health, Nutrition and Indigenous Medicine, Issuing of Gender Recognition Certificate for Transgender Community, General Circular No. 01-34/2016, 16 June 2016, available at: <http://203.94.76.60/cmsmoh/viewcircular.php?cno=01-34/2016&med=english>  
<sup>166</sup> Registrar-General’s Department, Circular No. 06/2016, 28 July 2016, available at: [https://static.lankanewsweb.net/images/CCI08192016\\_0001.jpg](https://static.lankanewsweb.net/images/CCI08192016_0001.jpg)



Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Ability of LGBTIQ+ Sri Lankans to have their gender identity legally recognised</b>			
		<p>Not all trans and gender non-conforming people may wish to undergo hormone therapy or surgical treatment. These persons are still entitled to have their official documentation reflect their gender identity.</p>	
<p>Transgender and gender non-confirming persons are able to have newly-issued birth certificates which reflect their gender identity.</p>	<p>The GRC can be used to have a person's birth certificate amended to reflect their gender identity. Amendment can only be done to that person's original birth certificate.<sup>167</sup> The District Registrar or Registrar usually makes a note or endorsement on the margin or on the reverse side of the birth certificate, either crossing out the existing name and sex or making a note that this has changed.</p>	<p>An amended birth certificate, while recording a person's preferred gender identity, will still make a person's trans identity be manifest, whether they wished for it to be so or not. Given the numerous situations birth certificates are required in Sri Lanka, this still exposes trans persons with amended birth certificates to uncomfortable scrutiny, harassment or discrimination.</p>	<ul style="list-style-type: none"> <li>• The Births and Deaths Registration Act 1954 should be amended to allow for new birth certificates to be issued to persons with a GRC.</li> </ul>
<p>LGBTIQ+ persons are able to access services in obtaining and amending official documentation in a sensitive and appropriate manner.</p>	<p>The Citizens' Charters at all public authorities responsible for issuing official documentation,<sup>168</sup> and their Codes of Conduct for employees, do not make note of or specify LGBTIQ+ persons, their particular needs with regard to official documentation and how they should be treated.</p>	<p>LGBTIQ+ persons face discomfort, discrimination, harassment, humiliation and potential violence at public authorities responsible for issuing official documentation because the very reasons for them attempting to access those services, namely</p>	<ul style="list-style-type: none"> <li>• All public authorities responsible for issuing official documentation<sup>169</sup> should introduce provisions on the sensitive treatment of LGBTIQ+ persons at either by explicit amendment of their Citizens' Charters and Codes of Conduct for employees or</li> </ul>

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167 Births and Deaths Registration Act 1954, sections 27 and 52(1)(i)

168 Department of the Registrar-General, Department of Immigration and Emigration, Department of Motor Traffic, Ministry of Education, Ministry of Health, Nutrition and Indigenous Medicines, Ministry of Home Affairs, all District and Divisional Secretariats.

169 Ibid.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Ability of LGBTIQ+ Sri Lankans to have their gender identity legally recognised</b>			
		<p>their identity not being accurately reflected on their official documents, mark them out for social stigma. This can make obtaining these services difficult and discourage LGBTIQ+ Sri Lankans from accessing those services in the first place.</p>	<p>through circulars issued for the entire public authority.</p>
<p>LGBTIQ+ students' attendance, participation in and undertaking of examinations in educational institutions is not unduly affected by official documentation requirements.</p>	<p>Schools, universities and educational institutions require NICs and other forms of identification at a number of points of access, and particularly to sit Ordinary/GCE Level, Advanced Level and university examinations.</p>	<p>LGBTIQ+ students, and particularly transgender and gender non-conforming students, may not have official documentation that reflects their gender identity, and may be too young to have initiated changing their official documentation (through, for example, the GRC). Consequently, they may be denied access to courses or programmes of study and candidacy at examinations. Internally within educational institutions, this also opens up such students to discrimination by management and instructors.</p>	<ul style="list-style-type: none"> <li>• Schools, universities and educational institutions should move towards loosening official documentation requirements for accessing courses and programmes of study and candidacy at examinations, and allow LGBTIQ+ students to approach educational programme coordinators and examiners confidentially to explain their situation.</li> <li>• Administrators and instructors at Schools, universities and educational institutions should be sensitised about LGBTIQ+ students and not deny them educational opportunities due to inconsistencies in official documentation.</li> </ul>



## CIVIC ISSUES AND ENTITLEMENTS

In this section, we examine the prospects for LGBTIQ+ Sri Lankans to exercise their civic rights and the institutional barriers that affect the enjoyment of such rights. The civic rights examined here are positive exercises of rights that relate to a person's civic identity and status as a citizen within the state. They are not the negatively defined rights, such as the right to non-discrimination, which permeate many of the other areas addressed in this Gap Analysis. These civic rights relate primarily to political participation and association, as well as being the freedom to access general social entitlements from the state.

In general, a lack of protections for LGBTIQ+ Sri Lankans in how certain political rights are defined and guaranteed for by the state hinders their ability to meaningfully participate in civic life. Social stigma and discrimination against LGBTIQ+ Sri Lankans further prevent them from being able to participate in civic life outside of the state sphere as well from being able to access their due civic entitlements. We derive the Ideal Settings for this section from international legal standards that declare civil and political rights, primarily the Universal Declaration of Human Rights and the International Covenant for Civil and Political Rights. The key stakeholders relating to this section are the Election Commission, political parties, Parliament and other public authorities in general.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Participating in electoral politics</b>			
<p>LGBTIQ+ Sri Lankans enjoy the freedom to participate fully in the political process, including as members of political parties and as elected representatives.</p>	<p>The Constitution and electoral legislation<sup>170</sup> do not mandate:</p> <ul style="list-style-type: none"> <li>Any identity-based criteria in how political parties should select candidates for elections, including LGBTIQ+ identity (apart from women's quota implemented at the Local Body Authority level).</li> <li>Any requirement on political parties to make provisions for LGBTIQ+ members (such as a dedicated LGBTIQ+ wing or equivalent).</li> </ul>	<p>Due to a lack of formal protections and compelling factors, LGBTIQ+ persons are discouraged from political participation within political parties.</p> <p>LGBTIQ+ identity itself is seen as a disqualifier for seeking political representation due to social stigma, and the use of homophobic and transphobic slurs on politicians, candidates and party members is common.</p> <p>LGBTIQ+ political party members may face harassment, discrimination and potential violence within political parties</p>	<p>Political Parties should:</p> <ul style="list-style-type: none"> <li>Include provisions in their party constitutions on recognising LGBTIQ+ members and candidates, and on non-discrimination towards them in all party procedures and activities;</li> <li>Recognise, select and foster LGBTIQ+ candidates for elections at all levels;</li> <li>Introduce dedicated LGBTIQ+ wings for LGBTIQ+ members to organise, mobilise and deliberate their issues.</li> </ul>

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170 Constitution of Sri Lanka, Parliamentary Elections Act No. 1 of 1981, Elections Act No. 15 of 1981, Referendum Act No. 07 of 1981, Provincial Councils Elections Act No. 2 of 1988, Local Authorities Elections Ordinance No. 53 of 1946, Local Authorities Elections Amendment Act No. 22 of 2012, Local Authorities Elections Act No. 1 of 2012, Registration of Electors Act No 44 of 1980

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Participating in electoral politics</b>			
	<ul style="list-style-type: none"> <li>• Any non-discrimination provisions based on the grounds of sexual orientation and gender identity for political party candidates and members.</li> <li>• In their constitutions or practice, no registered political party in Sri Lanka undertakes to:</li> <li>• Give consideration to selecting LGBTIQ+ candidates for elections;</li> <li>• Have a dedicated LGBTIQA+ wing or equivalent;<sup>171</sup></li> <li>• Enforce any non-discrimination provisions based on the grounds of sexual orientation and gender identity for party candidates and members;</li> <li>• The Election Commission does not have any specific political party, candidate or voter outreach programmes or materials on LGBTIQA+ persons' political participation.</li> </ul>	<p>and may be expelled upon their identity being discovered.</p>	<ul style="list-style-type: none"> <li>• The Election Commission should include LGBTIQ+ citizens as a criterion of focus in its outreach activities aimed at political parties and candidates, and voters, both to encourage greater political participation by LGBTIQ+ citizens; and to sensitise non-LGBTIQ+ entities and citizens on LGBTIQ+ citizens' political participation.</li> </ul>

171 The National People's Power (NPP) political alliance headed by the Janatha Vimukthi Peramana (JVP) political party includes the LGBTIQ+ group 'Samaabhimaani'; the NPP contested the 2019 Presidential Election and the 2020 Parliamentary General Election.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Exercising the right to vote</b>			
<p>LGBTIQ+ Sri Lankans fully exercise their right to vote and their access to voter registration is unimpeded.</p>	<p>Voter registration process is an annual process conducted by the Election Commission. through District Secretaries.<sup>172</sup> The process is residence-based and an eligible voter is registered at the residence they were living in on June 01 of each year. Grama Niladharis who act as enumerators provide registration forms to the Chief Occupant of each household who is responsible for filling in the details of all eligible voters residing their household which, once submitted, are verified then entered onto the Electoral Register for that year.</p>	<p>The annual, residence-based voter registration makes it difficult for many LGBTIQ+ persons to register to vote because:                      Many LGBTIQ+ voters do not reside at their family homes and do not have ongoing relationships with their families, so they are at risk of being excluded by their families in voter registration and thereby of being excluded from the electoral registry.</p> <p>Voters living outside their family home need to have stable residences as well as positive relationships with the landlords (or other person acting as the Chief Occupant) in order to successfully be registered – this may not be possible for all LGBTIQ+ voters who are more likely to have transient living arrangements.</p> <p>The entire registration process (including changing a place of registration) is postal-based and LGBTIQ+ voters may face difficulty receiving the correct mail at the right time as their family members or landlords may withhold it.</p>	<p>The Election Commission should revise the annual voter registration process to make it based on individual registration and not Chief Occupant-dependent and recognise temporary residential arrangements.</p>

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<sup>172</sup> Registration of Electors Act No 44 of 1980; Election Commission of Sri Lanka, 'Procedure of Registration of Electors', available at: [http://elections.gov.lk/en/voters/voters\\_registration\\_process\\_E.html](http://elections.gov.lk/en/voters/voters_registration_process_E.html)

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Exercising the right to vote</b>			
<p>LGBTIQ+ Sri Lankans fully exercise their right to vote by being able to cast their votes freely and fairly.</p>	<p>To vote on Election Day, it is mandatory for a voter to carry one recognised form of official identification: a National Identity Card, valid passport, valid driving license, senior citizens identity card, government pensioners' identity card, identity card issued to clergy, or temporary identity card issued by the Election Commission through Grama Niladhari. The GRC is not included in the forms of accepted documentation.</p> <p>The procedure on Election Day at polling stations is for:</p> <ul style="list-style-type: none"> <li>• The first officer to tally a voter's face with the photograph in the identity document and to direct the voter onwards if satisfied with their identity;</li> <li>• The second officer to find the name of the voter in the electoral register and announce their name aloud; and</li> <li>• For the third officer to examine the little finger of the left hand of the voter and apply inedible ink to it and then be supplied with the ballot paper.</li> </ul>	<p>LGBTIQ+ voters, and particularly transgender and gender non-confirming voters can face numerous difficulties in casting their votes on Election Day, and be deterred from doing so, because:</p> <p>Election officials at polling stations (particularly first and second officers) who may not be aware of various LGBTIQ+ identities may think that voters whose outward appearance does not match their identity documents are impersonating someone else and attempting to cast illegal votes, thus bar them from voting. A document such as the GRC cannot be produced to verify identity as it is not an accepted form of documentation.<sup>173</sup></p> <p>LGBTIQ+ voters can face verbal harassment or other degrading treatment while voting from election officials may not be sensitive to LGBTIQ identities (e.g. being shouted at, talked about loudly or accompanied out of polling stations).</p>	<p>The Election Commission should:</p> <ul style="list-style-type: none"> <li>• Include the GRC as an accepted form of official documentation that can be produced to verify identity at the polling station;</li> <li>• Sensitise election officials to LGBTIQ+ voters so that they are able to cast their votes at polling stations freely and without interference or undue difficulty by election officials or other voters.</li> </ul>

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173 Election Commission of Sri Lanka, "How To Vote", available at: [https://elections.gov.lk/en/elections/elections\\_how\\_to\\_vote\\_E.html](https://elections.gov.lk/en/elections/elections_how_to_vote_E.html)

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Exercising the right to vote</b>			
		LGBTIQ voters can face negative experiences at polling stations from other voters such as verbal harassment because they are seen to be different. Voting can also be an embarrassing or socially harmful experience in suburban and rural areas where a voter would be familiar with and know most of the voters from their community coming to vote.	

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Exercising the right to association by forming organisations</b>			
LGBTIQ+ Sri Lankans easily form, incorporate and operate LGBTIQ+-focused civil society and non-governmental organisations.	Not-for-profit community organisations can opt to: <ul style="list-style-type: none"> <li>Incorporate as a limited liability company (LLC) or company limited by guarantee (CLG) under the Companies Act No. 07 of 2007. Registration involves obtaining name approval from, submitting documentation and paying a fee to the Department of the Registrar of Companies.</li> </ul>	Although the criteria for registration as a LLC, CLG or NGO do not specify anything related to being LGBTIQ+-focused, in practice organisations which have attempted to register as all three entities have: <ul style="list-style-type: none"> <li>Had their applications unnecessarily delayed relative to other organisations;</li> <li>Been questioned about the legality of their activities (particularly based on</li> </ul>	The Department of the Registrar of Companies and the NGO Secretariat should: <ul style="list-style-type: none"> <li>Treat applications for incorporation and registration as LLCs, CLGs and NGOs by LGBTIQ+ organisations in the same manner as other applications, and not hold the identity of applicants or a LGBTIQ+ focus as a disqualification to incorporation or registration or cause for delay or obstruction;</li> </ul>

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Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Exercising the right to association by forming organisations</b>			
	<ul style="list-style-type: none"> <li>Register as a non-governmental organisation (NGO). Registration involves submitting relevant documentation, a letter of consent from the District Secretariat the organisation operates in and project details to the NGO Secretariat,<sup>174</sup> then subsequently obtaining approval from the Ministry of Defence and Ministry of Foreign Affairs. NGOs often also incorporate as LLCs or CLGs for additional security.</li> </ul> <p>The criteria for registration as a LLC, CLG or NGO do not explicitly make note of or specify any disqualifications against being LGBTIQ+-focused.</p>	<p>criminalisation of same-sex sexual activity);</p> <ul style="list-style-type: none"> <li>Been told to obtain letters of approval from public authorities unspecified in the process (such as the Ministry of Health or Attorney General's Department);</li> <li>Been advised to remove references to the LGBTIQ+ community or its rights to prevent delays or obstruction, and privately informed that such references were the cause of application delays or obstruction.</li> </ul>	<ul style="list-style-type: none"> <li>issue departmental circulars to enforce employees and officials to treat applications for LGBTIQ+ organisations without discrimination.</li> </ul>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Interacting with public authorities</b>			
LGBTIQ+ persons are free to interact with public authorities and access their civic entitlements and social services in an easy and fair manner while being treated with equality and dignity.	Citizens' Charters at all public authorities and their Codes of Conduct for employees, do not make note of or specify LGBTIQ+ persons and how they should be treated.	LGBTIQ+ persons face discomfort, discrimination, harassment, humiliation and the prospect of violence at nearly all public authorities they may interact with to obtain	All public authorities should introduce provisions on the sensitive treatment of LGBTIQ+ persons either by explicit amendment of their Citizens' Charters and Codes of Conduct for employees

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174 Voluntary Social Service Organisations [Registration and Supervision] Act No. 31 of 1980, Voluntary Social Service Organisations [Registration and Supervision] [Amendment] Act No. 8 of 1998



Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Interacting with public authorities</b>			
		<p>civic entitlements and access social services due to social stigma against LGBTIQ+ persons. This can make obtaining these entitlements and services difficult and discourage LGBTIQ+ Sri Lankans from accessing them in the first place.</p>	<p>All public authorities should introduce provisions on the sensitive treatment of LGBTIQ+ persons either by explicit amendment of their Citizens' Charters and Codes of Conduct for employees or through circulars issued for the entire public authority.</p> <p>The Ministry of Public Administration and Home Affairs should issue government-wide advice on realising within all public authorities the expanded right to non-discrimination which includes sexual orientation and gender identity as prohibited grounds, and comprehensive non-discrimination legislation once enacted.</p>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>The right to privacy and data protection</b>			
<p>LGBTIQ+ individuals' personal information that is disclosed to public authorities and non-governmental institutions, including places of employment, is protected and not subject to being shared or leaked internally within institutions or publicly.</p>	<p>Sri Lanka does not have a constitutionalised right to privacy nor any consolidated legislation on privacy or data protection.<sup>175</sup></p> <p>Provisions on privacy exist across a number of discrete pieces of legislation governing particular scenarios. However, these do not impose any wholesale duties on all public authorities and private entities to protect individuals' personal information. The Computer Crimes Act addresses matters that involve data which has been unlawfully obtained, the illegal interception of data, and the unauthorised disclosure of information.</p>	<p>LGBTIQ+ individuals' personal information, like that of all other Sri Lankans, is not protected with the public authorities and non-governmental institutions it is disclosed to. Their LGBTIQ+ identity, however, may make such information more liable to be shared internally within public authorities or non-governmental institutions, including places of employment, or to be publicly disclosed (particularly to media outlets). Such information could also lead to such individuals receiving discriminatory treatment when accessing public services.</p>	<p>The right to privacy should be constitutionally recognised, and be given effect through a Privacy Act or similar legislation that provides for effective data protection. This regime should also provide for an independent privacy commission which can hear complaints of breaches of privacy, and order effective remedies as appropriate.</p>

<sup>175</sup> Remedies for a breach of individual privacy may be found in the Roman-Dutch Law in the form of an action for injury under *actio injuriarum*, where damages can be pursued for the loss of reputation and dignity. However, this remedy does not equate to a right to privacy per se, and the circumstances for pursuing it are narrow.



## ACCESS TO JUSTICE

on the human rights of LGBTIQ+ Sri Lankans. As they show, despite some inadequacies, many areas of law include general legal protections within their respective fields, which are as relevant to LGBTIQ+ Sri Lankans as anybody else. For example, employment law prohibits arbitrary termination of employees and Labour Tribunals may review termination on a 'just and equitable' basis. Similarly, landlords are generally prohibited from ejecting tenants without a court order, even when in arrears. However, while these meagre legal protections may exist in letter, whether and how they can be accessed by people is also relevant in understanding their impact on the human rights of LGBTIQ+ Sri Lankans.

This section, on access to justice, seeks to fulfil that function. Access to justice encompasses "all the elements needed to enable citizens to seek redress for their grievances and to demand that their rights are upheld".<sup>176</sup> To assess access to justice in Sri Lanka broadly, we rely on a framework derived from General Recommendation 33 of the Committee on the Elimination of Discrimination against Women (CEDAW), 'General recommendation on women's access to justice'. The key criteria of the CEDAW framework on access to justice are justiciability, availability, accessibility, good-quality, provision of remedies and accountability. We adopt the broad definitions and the specific recommendations thereunder as 'Ideal Settings' (while adapting the latter to the LGBTIQ+ Sri Lankan context). Against them, we consider the Sri Lankan legal position and its impact on LGBTIQ+ Sri Lankans, and finally provide some ideas for reform.

The key observations regarding access to justice in this section are certainly not new; these are long standing problems. However, in looking at them through a 'queer' lens, we hope to highlight the intersectionality in human rights issues such as the right to access to justice, and delineate an entry point for LGBTIQ+ rights discourse that transcends its usual 'territories' of decriminalisation and constitutional recognition. Weaknesses in access to justice and justice institutions impact all Sri Lankans negatively. However, especially vulnerable groups such as LGBTIQ+ Sri Lankans experience weak access to justice as an additional layer of stigma and discrimination that aggravates the injustices taking place outside the courtroom or other institutions in the justice sector.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Justiciability: Unhindered access of LGBTIQ+ Sri Lankans to justice as well as their ability and empowerment to claim their human rights</b>			
Rights and correlative legal provisions are recognised and incorporated in the law.	The Constitution includes a fundamental rights (FR) chapter recognising some 'civil and political' human rights though rights to privacy, life and property are conspicuously omitted.	Much of the discrimination and stigma faced by LGBTIQ+ Sri Lankans are referable to a lack of respect for privacy, which includes the individual's right to make certain decisions about their life free of	<ul style="list-style-type: none"> <li>Amend the Constitution to recognise the right to privacy as well as the right to life and the freedom from arbitrary deprivations of property.</li> </ul>

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176 UN Women & the Council of Europe, 2016. Framework for Measuring Access to Justice Including Specific Challenges Facing Women: Guidance Note. [online] New York, USA: UN Women. Available at: <https://rm.coe.int/168069cf4e>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Justiciability: Unhindered access of LGBTIQ+ Sri Lankans to justice as well as their ability and empowerment to claim their human rights</b>			
		interference from the State or society or any other third party; in other countries, the rights to privacy, liberty and life have been instrumental in curtailing criminal laws that discriminated against SOGIESC minorities.	<ul style="list-style-type: none"> <li>• Amend the Constitution to recognise the right to privacy as well as the right to life and the freedom from arbitrary deprivations of property.</li> </ul>
	<p>The right to equality and non-discrimination does not specifically mention 'sexual orientation' or 'gender identity'; it mentions 'sex' and further indicates that the prohibited grounds of discrimination are open-ended and not exhaustive;</p> <p>Successive governments have stated before the UN Human Rights Committee that Article 12 includes sexual orientation and gender identities;<sup>177</sup></p>	As evident in this Gap Analysis, LGBTIQ+ Sri Lankans generally experience stigma and discrimination in society. Explicit recognition of SOGIESC as a prohibited ground of discrimination would signal a normative shift which would have cascading effects on society at large.	<ul style="list-style-type: none"> <li>• Amend the Constitution to include 'sexual orientation, gender identity and expression, and sex characteristics' as prohibited grounds of discrimination.</li> </ul>
	Socioeconomic rights are relegated to the chapter on 'Directive Principles on State Policy' which are not legally enforceable (though Supreme Court has enforced them by linking them to rights in the FR chapter).	As evident in this Gap Analysis, especially in the chapters on health or housing, there is a socioeconomic dimension to the stigma and discrimination faced by many LGBTIQ+ Sri Lankans.	Reform the Constitution to recognise human rights closely related to lived realities of Sri Lankans including justiciable socioeconomic rights based on lessons learnt from foreign jurisdictions that have already done so.

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<sup>177</sup> See, e.g., Human Rights Committee, 'List of issues in relation to the fifth periodic report of Sri Lanka: Addendum: Replies of Sri Lanka to the list of issues' (17 September 2014) CCPR/C/LKA/Q/5/Add.1, ¶ 43.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Justiciability: Unhindered access of LGBTIQ+ Sri Lankans to justice as well as their ability and empowerment to claim their human rights</b>			
		<p>The focus on personal liberty seen in the FR chapter of the Constitution misses the socioeconomic dimensions of human rights violations commonly taking place in Sri Lanka across all of society.</p>	
	<p>Human rights recognised in the FR chapter, except the right to information, are not accompanied by enabling laws to implement them, generally depending on existing laws including colonial laws (e.g., Code of Criminal Procedure) for statutory implementation.</p>	<p>Especially as regards socioeconomic rights, statutory implementation of rights-based normative standards is a criterion of realistic fulfilment;<sup>178</sup> the absence of such rights-based legislation and the focus seen in existing legislation on establishing institutions with broad discretionary powers subject only to the supervision of Ministers indicates a significant gap. Such an approach almost invariably subject LGBTIQ+ Sri Lankans vulnerable to arbitrariness, discrimination and abuses of power. Legislation on rights-based rules and principles on how various socioeconomic policies (such as housing, healthcare, employment) are to be formulated, implemented monitored, etc. is needed urgently to protect such vulnerable groups as LGBTIQ+ Sri Lankans.</p>	<ul style="list-style-type: none"> <li>• Civil society organisations should, in a systematic manner, research and advocate on the need for updating colonial and pre-1978 legislations to fit modern requirements based on human rights.</li> <li>• Civil society organisations should research and advocate on consolidating various legislations relevant to various socioeconomic rights and make proposals for reorienting economic policy towards a rights-based approach through legislative interventions.</li> </ul>

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178 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23, available at: <https://www.refworld.org/docid/4538838e10.html>, para. 3.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Justiciability: Unhindered access of LGBTIQ+ Sri Lankans to justice as well as their ability and empowerment to claim their human rights</b>			
De jure and de facto equality is ensured by improving unhindered access to justice systems.	All executive and administrative actions can be challenged under the rubric of FR through the Supreme Court and the Human Rights Commission of Sri Lanka (HRCSL). <sup>179</sup>	The opportunity to challenge executive action before Supreme Court and HRCSL is appreciated; however, the ability of vulnerable groups such as LGBTIQ+ Sri Lankans to access this jurisdiction is limited by various factors, as discussed further in this section;	See immediately below.
	FR petitions to Supreme Court against executive/ administrative actions must be filed within 1 month of a violation/ imminent violation. <sup>180</sup>  However, the Supreme Court has indicated that it is willing to overlook time-bar in appropriate special circumstances. <sup>181</sup>	For claimants from vulnerable groups such as LGBTIQ+ Sri Lankans, the one-month time limit imposes too great a burden in finding legal representation and mounting litigation (as discussed below).	<ul style="list-style-type: none"> <li>• Amend the Constitution to remove the time-bar in filing of applications.</li> <li>• LGBTIQ+ community organisations should improve preparedness to mobilise legal representation in FR applications for members of the community in appropriate cases.</li> <li>• LGBTIQ+ community organisations should pursue the idea of agitating outstanding fundamental rights violations that are otherwise out of time to test the judicial doctrine related to this limitation.</li> </ul>
	Complaints to HRCSL on FR violations are not time-barred; complaints made to	LGBTIQ+ activists have used this provision in previous occasions. However, previous	<ul style="list-style-type: none"> <li>• LGBTIQ+ community organisations should train LGBTIQ+ activists and</li> </ul>

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179 Constitution of Sri Lanka, Article 126(1).

180 Constitution of Sri Lanka, Article 126(2).

181 See, e.g., Gamaethige v Siriwardana (1988) 1 Sri.L.R. 384, 401-02.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Justiciability: Unhindered access of LGBTIQ+ Sri Lankans to justice as well as their ability and empowerment to claim their human rights</b>			
	<p>HRCSL can 'stop the clock' on the Supreme Court time-bar until Commission proceedings terminate; however, the Supreme Court has been inconsistent in granting leave to proceed even when HRCSL complaints had been filed within time.<sup>182</sup></p>	<p>experiences indicate a gap in technical knowledge relating to "do's and don'ts" in filing an HRCSL complaint to buy more time for the Supreme Court petition.</p>	<p>community members on effective strategies relevant to accessing Supreme Court and HRCSL.</p> <ul style="list-style-type: none"> <li>• HRCSL should monitor the Supreme Court's case law development of the time-bar exception for complaints filed in HRCSL and periodically issue guidance to the public on navigating the same.</li> </ul>
	<p>Legislative acts (enacted laws) are generally not amenable to human rights review;<sup>183</sup> however, Supreme Court has made some inroads into this principle.<sup>184</sup></p>	<p>Much of the discrimination faced by LGBTIQ+ Sri Lankans is referable to the penal provisions on gross indecency and unnatural intercourse which are thought to be unreviewable by the judiciary.<sup>185</sup></p>	<ul style="list-style-type: none"> <li>• Amend the Constitution to adopt an appropriate model of judicial review of legislation.</li> <li>• LGBTIQ+ community organisations should share legal expertise on techniques such as 'reading down' and 'severability' of laws that are available under the existing Constitution.</li> </ul>
	<p>Proposed bills for enactment are amenable to abstract human rights review, within very narrow time limits;<sup>186</sup> Committee Stage amendments can avoid review.</p>	<p>Abstract review requires judges to predict every possible application of a bill, but judges themselves may not be aware of the needs and interests of LGBTIQ+ Sri Lankans.</p>	<ul style="list-style-type: none"> <li>• Amend the Constitution to adopt an appropriate model of post-enactment review.</li> <li>• Review the procedural and constitutional gaps that enable</li> </ul>

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182 See, e.g., *Ranasinghe v Ceylon Petroleum Storage Terminals Pvt Ltd*, Supreme Court (SC FR 244/2017), decided 22.02.2019.

183 Constitution of Sri Lanka, Articles 16(1), 80(3).

184 See, e.g., Supreme Court Reference No. 03 of 2008 [unreported].

185 Constitution of Sri Lanka, Articles 16(1),

186 Constitution of Sri Lanka, Article 120.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Justiciability: Unhindered access of LGBTIQ+ Sri Lankans to justice as well as their ability and empowerment to claim their human rights</b>			
		Even after the Supreme Court pronounces on the constitutionality or otherwise of a proposed bill, during the committee stage of the enactment process, it is open for legislators to introduce subtle changes to the law that would not be subject to the scrutiny of judges prior to enactment. LGBTIQ+ issues have been politically charged in the past, and self-portrayals of bravado in 'throwing out' proposed reforms are within LGBTIQ+ Sri Lankans' recent memory. <sup>187</sup>	revisions to a judicially reviewed bill at the committee stage.
	Supreme Court is vested with exclusive jurisdiction in FR; whenever questions of FR arise in lower court cases, they are obliged to refer them forthwith to Supreme Court for determination. <sup>188</sup>	See below, under 'Availability'.	See below, under 'Availability'.
Independence, impartiality, integrity and credibility of judicial and quasi-judicial bodies are guaranteed.	Subsequent to the 20th amendment to the Constitution, superior court [Supreme Court (SC) and Court of Appeal COA] judges, chairs and members of independent commissions, the Attorney General	Legal reforms related to issues faced by LGBTIQ+ Sri Lankans tend to become highly charged politically – a lack of independence in institutions with the responsibility to oversee or carry out or	<ul style="list-style-type: none"> <li>Reform the Constitution to ensure that judges, commissioners and key public officials are appointed and removed by an independent body in accordance with international best practice.</li> </ul>

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187 Shermal Wijewardene & Nehama Jayewardene, 'Law and LGBTIQ People in Sri Lanka: Developments and Narrative Possibilities' Australian Journal of Asian Law, Vol. 20, No. 2, Article 11, 2020.  
188 Constitution of Sri Lanka, Article 125(1).



Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Justiciability: Unhindered access of LGBTIQ+ Sri Lankans to justice as well as their ability and empowerment to claim their human rights</b>			
	<p>and Inspector General of Police are appointed unilaterally by the President (he may or may not consider observations from a five-member Parliamentary Council if they are submitted on time).</p> <p>Judges of superior courts and members of HRCSL may be removed by the President on an address to that effect from Parliament; while parliamentary Standing Orders provide for an inquiry by a Select Committee to remove judges, no legally established procedure exists on removing an HRCSL member. The Attorney General and Inspector General of Police may be removed by the President upon a resolution to that effect by Parliament; Removal of Officers Act No 5 of 2002 provides for the procedure to be followed, which includes an independent inquiry the findings on which the Parliament's resolution must be based.</p> <p>Members of the Judicial Services Commission (JSC),</p>	<p>carry out or support such reforms means that such public officers may shirk their responsibilities in fear of reprisal or retaliation or in expectation of some benefit.</p> <p>The dismissal and attempted dismissal of apex judges returning unsatisfactory judgments is within the experience of Sri Lanka;<sup>189</sup> this erodes the confidence of LGBTIQ+ Sri Lankans in the ability of justice institutions to withstand political pressure in disputes related to LGBTIQ+ issues.</p> <p>It is more difficult to remove the Attorney General or Inspector General of Police from office than the Chief Justice.</p> <p>The prospect of further promotions to apex courts or to foreign diplomatic missions have previously called into question the independence of the Attorney General and Inspector General of Police; the independence of these institutions is vital to ensure access to justice of vulnerable groups</p>	<ul style="list-style-type: none"> <li>• Reform the Constitution to provide a common age of retirement for all judges;</li> </ul>

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189 See, for an overview, Niran Anketell & Asanga Welikala, 'A Systematic Crisis in Context: The Impeachment of the Chief Justice, the Independence of the Judiciary and the Rule of Law in Sri Lanka' (Policy Brief, April 2013), available at: <https://www.cpalanka.org/the-impeachment-of-the-chief-justice-the-independence-of-the-judiciary-and-the-rule-of-law-in-sri-lanka/> (accessed: 9.2.2021)

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Justiciability: Unhindered access of LGBTIQ+ Sri Lankans to justice as well as their ability and empowerment to claim their human rights</b>			
	<p>which exercises disciplinary control over inferior judges, may be removed by the President for cause assigned.</p> <p>Salaries of judges and most commissioners cannot be diminished while in office and are generally decided by Parliament and charged to the Consolidated Fund.</p> <p>Superior court judges are subject to different ages of retirement. COA judges retire at 63 and SC judges at 65.</p>	<p>of vulnerable groups like LGBTIQ+ Sri Lankans.</p> <p>The appearance and actual independence of investigatory and prosecutorial authorities are crucial factors that inspire confidence among LGBTIQ+ Sri Lankans in seeking justice for issues they face.</p> <p>The broad power of the President to remove JSC members threatens the security of tenure of lower court judges.</p> <p>Security of salary is essential to ensure the independence of justice professionals.</p> <p>Different ages of retirement could weaken the independence of judges who may be tempted to compromise on their independence in seeking promotion to the next highest court prior to retirement.</p>	<ul style="list-style-type: none"> <li>• Amend the Constitution to adopt an appropriate model of post-enactment review.</li> <li>• Review the procedural and constitutional gaps that enable revisions to a judicially reviewed bill at the committee stage.</li> </ul>
	<p>Grant or refusal of leave to proceed in FR applications requires at least two judges; but no reasons are specifically required to be given.</p>	<p>Refusal of leave to proceed without reasons assigned is within the experience of Sri Lanka ;<sup>190</sup> the lack of reasons given in politicised disputes</p>	<ul style="list-style-type: none"> <li>• Amend the Constitution to require that refusal of leave to proceed by the Court is always accompanied with written reasons.</li> </ul>

Contd.

190 Human Rights Watch, 'Sri Lanka: Covid-19 Forced Cremation of Muslims Discriminatory' (18.01.2021) available at: <https://www.hrw.org/news/2021/01/18/sri-lanka-covid-19-forced-cremation-muslims-discriminatory>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Justiciability: Unhindered access of LGBTIQ+ Sri Lankans to justice as well as their ability and empowerment to claim their human rights</b>			
		would raise questions on the independence of apex court judges, especially in Supreme Court since it is the court of last resort.	
Rules on burden of proof do not subvert equality between parties (esp. where power relationships deprive LGBTIQ+ individuals of the chance for fair judicial treatment).	Equality/discrimination claims may require evidence related to treatment of comparators which citizens may not have access to, the lack of which may defeat their claims in purely adversarial settings.	LGBTIQ+ Sri Lankans are charged with gross indecency under a provision that applies equally to heterosexual couples as much as others; evidence of prosecutions being pursued exclusively against same sex couples would establish a pattern of discriminatory animus; however, an aggrieved petitioner would not have access to prosecutorial data to establish such a pattern.	<ul style="list-style-type: none"> <li>• Review the legal provisions applicable to summoning public records during a hearing.</li> <li>• LGBTIQ+ community organisations should educate members of the community on initial responses to experiences of discrimination/harassment etc., especially with a view to gathering evidence for subsequent action (including litigation).</li> </ul>
	Challenging harassment in government offices or arbitrary arrests, detention or surveillance by law enforcement authorities may require access to internal records (e.g. police notes) which citizens may not have access to.	The arbitrariness of an arrest is usually disclosed by the movements of police officers as recorded in information books and personal notebooks; however, most Sri Lankans would not be able to access such records, to use them as evidence in a legal proceeding; LGBTIQ+ Sri Lankans would face additional discriminatory hindrances in accessing such documents because of their SOGIESC.	<ul style="list-style-type: none"> <li>• Review the legal provisions applicable to summoning public records in the course of a hearing;</li> <li>• Promote the use of RTI in relation to police procedures.</li> </ul>

Contd. 

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Justiciability: Unhindered access of LGBTIQ+ Sri Lankans to justice as well as their ability and empowerment to claim their human rights</b>			
<p>NGOs, civil society organisations and community-based organisations are unhindered and supported in developing sustainable mechanisms supporting access to justice for LGBTIQ+ Sri Lankans.</p>	<p>SC Rules 1990, Rule 44(7), provides Court with power to refer complainants that require legal assistance to Registrar who may facilitate assistance of Legal Aid Commission or other organisations.</p>	<p>See below, discussions under 'Accessibility'.</p>	<ul style="list-style-type: none"> <li>• The Legal Aid Commission should provide legal aid to those who need it in all types of cases, but especially criminal cases, subject only to the availability of resources; the Commission should take specific measures to ensure that the lack of resources does not disproportionately impact vulnerable groups such as LGBTIQ+ Sri Lankans.</li> <li>• Court Registrars could maintain a database for lawyers and organisations offering pro bono assistance in different areas of law.</li> <li>• LGBTIQ+ community organisations should also support formation of networks of lawyers in every district with training and capacity building on litigation related to LGBTIQ+ issues; and secure funding to support litigation explored by such lawyers on behalf of aggrieved LGBTIQ+ individuals.</li> </ul>

Contd. 

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Availability: Establishment of courts and other quasi-judicial or other bodies across Sri Lanka in both urban, rural and remote areas, as well as their maintenance and funding</b>			
<p>Courts, tribunals and additional entities are established, maintained and developed, as needed, to guarantee the right of access to justice of all Sri Lankans without discrimination on the whole territory of Sri Lanka, including in remote areas.</p>	<p>Supreme Court's exclusive jurisdiction in FR means citizens must connect with Colombo to access the court; HRCSL however has 10 regional offices and 6 sub-offices, through which most of the population reaches the Commission<sup>191</sup>; currently 39 Labour Tribunals operate across the Island; Magistrate Courts/ Primary Courts, District Courts/Family Courts and High Courts/Provincial High Courts are spread out across the island.</p>	<p>Petitioners in the Supreme Court technically need not travel to Colombo, it is sufficient in FR proceedings to be represented by an Attorney-at-Law;</p> <p>However, the distance between Colombo and other areas is not only physical but also psychological and sociological.</p> <p>Indeed, though technically any Attorney-at-Law may bring a petition to court on behalf of a client, in practice not all attorneys enjoy the same level of access to the Supreme Court; this imposes on individuals living in remote areas, additional burdens on securing adequate legal representation;</p> <p>In addition, for an LGBTIQ+ Sri Lankan, reaching out to lawyers and courts far away in Colombo may involve fears of exposure.</p> <p>By comparison, the availability of regional and sub-offices of the HRCSL as well as Labour Tribunals expands physical access</p>	<ul style="list-style-type: none"> <li>• Amend the Constitution to decentralise the fundamental rights jurisdiction of the Supreme Court and extended it to regional courts such as Provincial High Courts.</li> <li>• The Judicial Service Commission should establish a public outreach body independently of the executive and the legislature to enhance public awareness on courts' routine outputs in terms of decisions as well as to make court procedures more accessible to the people.</li> </ul>

Contd. 

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Availability: Establishment of courts and other quasi-judicial or other bodies across Sri Lanka in both urban, rural and remote areas, as well as their maintenance and funding</b>			
		<p>to people living beyond Colombo; however, at least where HRCSL is concerned, the distance of a regional or sub-office from the head office (and therefore its supervisory control) can create discrepancies in the quality of the service, esp. in terms of receptiveness of complaints and timeliness of their disposal.</p> <p>Though lower courts are spread out across the Island, they do not have jurisdiction on FR matters – any matter arising in an FR case must be referred to the Supreme Court in Colombo. With such referred matters, litigants may need to seek legal representation from Colombo, since in practice not all Attorneys-at-Law appear in Supreme Court.</p>	
<p>Rules on standing allow groups and civil society organisations with an interest to lodge petitions and participate in the proceedings.</p>	<p>Standing in FR and administrative law matters has been broadened through case law to include CSOs and public-spirited citizens with interest in cases.</p>	<p>Courts' treatment of standing in the context of public law litigation related to LGBTIQ+ Sri Lankans remains to be tested.</p>	<ul style="list-style-type: none"> <li>• LGBTIQ+ community organisations should be willing to test various approaches to standing by actively engaging with courts on rights relevant LGBTIQ+ communities.</li> <li>• Such organisations should seek training from similar organisations</li> </ul>

Contd. →

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Availability: Establishment of courts and other quasi-judicial or other bodies across Sri Lanka in both urban, rural and remote areas, as well as their maintenance and funding</b>			
			abroad with experience in working with clients on litigation as an avenue for human rights-related justice.
Oversight by independent inspectors ensures the proper functioning of the justice system and address any discrimination committed by justice system professionals.	No such bodies are in place; Judicial Services Commission does this to a limited extent in terms of exercising disciplinary control over judges of lower courts, but this is narrow function and does not extend to ensuring access to justice on the basis of equality.	The fear of discrimination is a significant deterrent of aggrieved LGBTIQ+ Sri Lankans seeking redress before courts; the existence of a public body whose sole function is to monitor the justice system and address discrimination at both a systemic and individual level would greatly improve confidence of vulnerable groups such as LGBTIQ+ communities in seeking justice in courts.	<ul style="list-style-type: none"> <li>LGBTIQ+ community organisations should, in partnership with other human rights organisations, research and advocate for the creation of such a body in accordance with international best practices adapted for domestic contexts.</li> </ul>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Accessibility: All justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to LGBTIQ+ Sri Lankans, and are adapted and appropriate to their needs including those who face intersectional or compounded forms of discrimination</b>			
Economic barriers to justice are removed by the provision of legal aid and by ensuring that fees for issuing and filing documents as well as court costs are reduced.	Supreme Court Rules 1990, Rule 44(7), enables the Court to act on a FR complaint even if it is not in the form of a formal petition where the complainant is without means to follow proper procedure.	As a vulnerable group, LGBTIQ+ Sri Lankans are restricted economically from accessing lawyers to seek justice in courts of law; as such, flexibility in how complaints are made to justice institutions such as Supreme Court and HRCSL are welcome	<ul style="list-style-type: none"> <li>LGBTIQ+ community organisations should carry out capacity building projects on access to justice among their communities to raise awareness on available avenues for justice on various matters of concern to them.</li> </ul>

Contd. →

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Accessibility: All justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to LGBTIQ+ Sri Lankans, and are adapted and appropriate to their needs including those who face intersectional or compounded forms of discrimination</b>			
	<p>The procedure to make a complaint to the HRCSL is simple and flexible, no fees are charged to entertain a complaint.</p>	<p>measures in encouraging vulnerable communities to seek justice;</p> <p>However, though the 'legal literacy' of the public has not been evaluated in Sri Lanka, in general, awareness among vulnerable groups like LGBTIQ+ Sri Lankans (and the public generally) of the flexibility available in approaching justice institutions is arguably low;</p> <p>At the same time, flexibility in making complaints also has an impact on the justice institution in question: for example, there are significant backlog in the caseload at HRCSL; one factor causing such a backlog would be that, where complaints are accepted on a flexible basis, investigating staff have to undertake additional work to compensating the for the gaps in the complaint through additional inquiries and research.</p>	<ul style="list-style-type: none"> <li>• Such organisations should support the formation of networks of LGBTIQ+ communities that may share legal awareness and link victims to organisations that may coordinate support responses on their behalf.</li> <li>• Justice institutions should be adequately resourced by the Government based on needs assessments conducted within such institutions. Deviations from that approach may be only on the basis of adequate and publicly available reasons.</li> <li>• Civil society organisations should monitor whether and to what extent justice institutions are adequately resourced and advocate for adequate resourcing as a matter of urgent need.</li> </ul>
	<p>Supreme Court (Exemption from Fees) Rules 1991; Chief Justice may make an order exempting a petitioner or respondent in an FR application from paying fees if the Chief Justice</p>	<p>These measures designed to relieve economically vulnerable aggrieved parties from accessing justice institutions are welcome. In principle they benefit LGBTIQ+ Sri Lankans, too;</p>	<ul style="list-style-type: none"> <li>• LGBTIQ+ community organisations should carry out capacity building projects on access to justice among their communities to raise awareness on available avenues</li> </ul>

Contd.



Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Accessibility: All justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to LGBTIQ+ Sri Lankans, and are adapted and appropriate to their needs including those who face intersectional or compounded forms of discrimination</b>			
	<p>is satisfied that insistence upon payment may result in a denial of justice;</p> <p>Supreme Court Rules 1990, Rule 44(7), allows the Court to direct the Registrar to refer an FR case for Legal Aid Commission's (LAC) assistance where a petitioner has no means to afford legal representation of their own.</p> <p>A general right to legal aid in criminal cases at all court levels is expressed in the ICCPR Act, No 56 of 2007.</p> <p>The Code of Criminal Procedure (CCP) provides that every defendant or aggrieved party before any criminal court has the right to be represented by an Attorney-at-Law (s 260).</p> <p>Upon indictment in High Court, the CCP obliges judges to assign an Attorney-at-Law to a defendant if they request for one. No corresponding obligation lies as against Magistrates in the CCP.</p> <p>HRCSL handling of complaints is free of charge and does not require representation by an Attorney-at-Law.</p>	<p>However, in general, awareness among vulnerable groups like LGBTIQ+ Sri Lankans (and the public generally) of concessions on expenses related to accessing justice institutions may be low;</p> <p>Even where legal aid is provided for in statutes and a Legal Aid Commission exists, adequate resources are not available to support a robust Legal Aid sector, and the resulting 'rationing' of legal aid resources may discriminate against LGBTIQ+ Sri Lankans seeking such assistance.</p>	<p>for justice on various matters relevant to them.</p> <ul style="list-style-type: none"> <li>• Such organisations should support the formation of networks of LGBTIQ+ communities that may share legal awareness and link victims to organisations that may coordinate support responses on their behalf.</li> <li>• Such organisations should also support formation of networks of lawyers in every district with training and capacity building on litigation related to LGBTIQ+ issues; and secure funding to support litigation explored by such lawyers on behalf of aggrieved LGBTIQ+ individuals.</li> </ul>

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Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Accessibility: All justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to LGBTIQ+ Sri Lankans, and are adapted and appropriate to their needs including those who face intersectional or compounded forms of discrimination</b>			
	<p>Legal Aid Commission services are provided to 'deserving persons'.<sup>192</sup></p> <p>Legal Aid Commission employs a client income eligibility test. Legal Aid Commission grants legal assistance only in civil litigation and FR matters; criminal matters are excluded presumably due to the CCP provisions.</p>	<p>Statutory criteria like 'deserving persons' are open to interpretation; in the context of stigma and discrimination against LGBTIQ+ Sri Lankans, it is possible that an applicant for legal aid may be considered undeserving by virtue only of their SOGIESC.</p> <p>Though client income is a relevant consideration in apportioning limited resources available for legal aid, a lack of funds may not be the only reason a person seeks legal aid; the fear of discrimination by lawyers may also motivate such applications; moreover, even where lack of finances is still a motivating factor, clients who narrowly fail the income eligibility test may still deserve legal aid by their case's connection to stigma and discrimination.</p>	<ul style="list-style-type: none"> <li>• Administrative guidelines on the determination of the 'deserving person' criteria, including case studies of their application, should be made available to the public by the LAC.</li> <li>• In all cases where an application for legal aid has been refused, the Commission should provide written reasons to the applicant.</li> <li>• Guidelines should be adopted internally within LAC to avoid bright-line, automatic qualification rules for client eligibility; exceptions should be available to income eligibility tests, where clients experience difficulties in accessing legal representation by virtue of stigma and discrimination.</li> <li>• Civil society organisations should monitor whether and to what extent the LAC is resourced and advocate for adequate resourcing as a matter of urgent need.</li> </ul>

Contd.

<sup>192</sup> Legal Aid Act, No 27 of 1978, s 4(d)(iv).

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Accessibility: All justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to LGBTIQ+ Sri Lankans, and are adapted and appropriate to their needs including those who face intersectional or compounded forms of discrimination</b>			
	<p>Prohibition of champertous agreements – where lawyers are prohibited from entering into agreements with clients to sue on behalf of the client on the understanding that the lawyer may take a percentage of the compensation won in lieu of a fee.</p> <p>Prohibition of advertising attorney services – lawyers are prohibited from advertising their services except in heavily restricted ways such as by hanging a black and white name board near one’s chambers.</p>	<p>One strategy that may incentivise lawyers to provide assistance to clients as well as provide adequate and genuine representation for their grievances is the possibility of sharing in a reasonable percentage of any compensation won by the client; many jurisdictions in the world are seen to reform their traditional views on champerty in favour of expanding access to courts of people of all socioeconomic backgrounds.</p> <p>Even where an aggrieved LGBTIQ+ Sri Lankan wishes to seek justice and litigation, they may yet be impeded by the inability to locate adequate legal representation; the nature of disputes involving SOGIESC are such that most persons would not want to speak to multiple people looking for an appropriate lawyer; enabling lawyers who are willing to take up cases to advertise their services (esp. online) would bridge a gap between such lawyers and prospective clients.</p>	<ul style="list-style-type: none"> <li>• Civil society organisations should research and advocate reforms related to champerty in light of international best practice and the need for better access to justice.</li> <li>• Civil society organisations should research and advocate reforms related to advertising in the legal profession in light of international best practice and the need for better access to justice.</li> </ul>

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Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Accessibility: All justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to LGBTIQ+ Sri Lankans, and are adapted and appropriate to their needs including those who face intersectional or compounded forms of discrimination</b>			
<p>Remove linguistic barriers by providing independent and professional translation and interpretation services when needed; provide individualised assistance for illiterate LGBTIQ+ Sri Lankans in order to guarantee their full understanding of the judicial or quasi-judicial processes.</p>	<p>Court interpreters are available in theory only.</p>	<p>While all apex courts operate exclusively in English (in practice), most other public institutions operate in Sinhala with little provision made for services to be available in Tamil; as mentioned at the outset, LGBTIQ+ Sri Lankans come from various social backgrounds, and their various identities intersect in their experience of discrimination in society; language discrepancies are a crucial example of how the experiences of LGBTIQ+ Sri Lankan differ among themselves.</p>	<ul style="list-style-type: none"> <li>• The relevant Ministry should ensure that all courts are staffed with language interpreters across all official languages of Sri Lanka.</li> <li>• LGBTIQ+ community organisations should train staff that are able to accompany LGBTIQ+ individuals to public institutions and act as interpreters on their behalf.;</li> <li>• Such organisations should make known the availability of such services in minority language communities as well as in all instances where English is not the preferred language for proceedings.</li> </ul>
<p>Targeted outreach activities are developed and information about available justice mechanisms, procedures and remedies are distributed.</p>	<p>The State does not engage in outreach activities for legal literacy.</p>	<p>See above discussion.</p>	<ul style="list-style-type: none"> <li>• LGBTIQ+ community organisations should carry out capacity building projects on access to justice among their communities to raise awareness on available avenues for justice on various matters relevant to them.</li> </ul>

Contd.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<p><b>Accessibility: All justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to LGBTIQ+ Sri Lankans, and are adapted and appropriate to their needs including those who face intersectional or compounded forms of discrimination</b></p>			
			<ul style="list-style-type: none"> <li>• Such organisations should support the formation of networks of LGBTIQ+ communities that may share legal awareness and link victims to organisations that may coordinate support responses on their behalf.</li> <li>• Such organisations should also support formation of networks of lawyers in every district with training and capacity building on litigation related to LGBTIQ+ issues; and secure funding to support litigation explored by such lawyers on behalf of aggrieved LGBTIQ+ individuals.</li> </ul>
<p>The physical environment and location of judicial and quasi-judicial institutions and other services are welcoming, secure and accessible to all LGBTIQ+ Sri Lankans.</p>	<p>Courtrooms are generally known to be hostile environments; not suitable for sensitive and or confidential proceedings.</p>	<p>LGBTIQ+ Sri Lankans fearing stigma and discrimination are discouraged from accessing justice institutions when they have no faith that such institutions will treat their matter with the appropriate level of sensitivity and confidentiality.</p>	<ul style="list-style-type: none"> <li>• The Department of Buildings should review the structure and design of justice institutions for their functional appropriateness;</li> <li>• LGBTIQ+ community organisations should explore pursuing this issue as a matter of interest with professional bodies in the fields of architecture, engineering, interior design etc.</li> </ul>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Accessibility: All justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to LGBTIQ+ Sri Lankans, and are adapted and appropriate to their needs including those who face intersectional or compounded forms of discrimination</b>			
<p>Justice access centres, such as “one-stop centres”, which include a range of legal and social services, are available in order to reduce the number of steps that a LGBTIQ+ Sri Lankan has to take to access justice.</p>	<p>At present, no such centres exist.</p>	<p>At present, far too many specialised bodies exist with power to consider requests and grievances by citizens, making it difficult for individuals from vulnerable, economically marginalised groups to navigate the system or causing red-tape fatigue. Additionally, LGBTIQ+ Sri Lankans have to deal with the stigma against their SOGIESC in engaging in these processes.</p>	<ul style="list-style-type: none"> <li>• Citizens should be enabled to submit all requests for any public service or benefit through the Divisional Secretariat they live under; it should be the responsibility of a casework officer of a specialised service established for this purpose to comprehensively facilitate the request on behalf of the citizen, including by collating necessary supporting documentation, submitting it to the relevant authorities on behalf of the applicant, as well as liaising between such authority and the citizen.</li> <li>• Citizens should be enabled to submit all complaints of grievance relating to fundamental rights to the HRCSL; the HRCSL should in turn be given the resources and legal capacity to compile an adequate complaint on behalf of the citizen and submit it to the relevant specialised body (such as the National Police</li> </ul>

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Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Accessibility: All justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to LGBTIQ+ Sri Lankans, and are adapted and appropriate to their needs including those who face intersectional or compounded forms of discrimination</b>			
			Commission or Agrarian Tribunal) on behalf of the citizen, including by collating necessary supporting documentation, directing them to the attention of the relevant body on behalf of the applicant, as well as liaising between such authority and the citizen; these functions should be additional to and separate from the Commission's own jurisdiction in inquiring into complaints.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Good quality of justice systems, including remedies: All components of the justice system are efficient and timely; and contextualised, dynamic, participatory, open to innovative practical measures and gender-sensitive</b>			
Provides, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution.	Delays in justice in Sri Lanka are well documented, especially in judicial proceedings. <sup>193</sup>  HRCSL recommendations are not enforceable, and also take a long time to be issued.	Delays in justice are a major factor in discouraging many people, including LGBTIQ+ Sri Lankans, from seeking justice in courts, especially due to the high expenses associated with such prolonged delays.  The non-binding nature of HRCSL recommendations also discourage Lankans, including LGBTIQ+ Sri Lankans, from accessing justice through HRCSL.	<ul style="list-style-type: none"> <li>Reform the HRCSL Act to vest it with enforcement powers similar to those found in the Right to Information Act as regards the RTI Commission.</li> </ul>

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<sup>193</sup> Sectoral Oversight Committee on Legal Affairs, Parliament of Sri Lanka 'Recommendations pertaining to the expeditious and efficient administration of Criminal Justice' (2017), available at: <https://www.parliament.lk/uploads/comreports/1510738363068517.pdf>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Good quality of justice systems, including remedies: All components of the justice system are efficient and timely; and contextualised, dynamic, participatory, open to innovative practical measures and gender-sensitive</b>			
<p>Implement mechanisms to ensure that evidentiary rules, investigations and other legal and quasi-judicial procedures are impartial and not influenced by stereotypes or prejudice.</p>	<p>Stereotyping and prejudice is well known to be pervasive in all aspects of the justice system, cutting across ethnicity, gender, caste, language, status of wealth; particularly at the level of police; no specific mechanisms in place to reform systemic weaknesses in identity bias.</p>	<p>Fear of stigma and discrimination is also a major factor in discouraging many people, including LGBTIQ+ Sri Lankans, from seeking justice in courts.</p>	<ul style="list-style-type: none"> <li>• LGBTIQ+ community organisations should, in partnership with other human rights organisations, research and advocate for the creation (in accordance with international best practices adapted for domestic contexts) of an independent body of inspectors to ensure the proper functioning of the justice system and address any discrimination committed by justice system professionals; such a body may be linked to the HRCSL; it would have the power to collate system-wide data within specific justice institutions as well as to conduct trainings and awareness programmes.</li> <li>• LGBTIQ+ community organisations should seek access to public authorities on a people-to-people basis so as to dispel myths, stigma and engender sensitivity and awareness among public officials.</li> </ul>

Contd.



Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Good quality of justice systems, including remedies: All components of the justice system are efficient and timely; and contextualised, dynamic, participatory, open to innovative practical measures and gender-sensitive</b>			
<p>The privacy and confidentiality of legal proceedings is assured where necessary.</p>	<p>Under the Constitution, judges of any court may order that any proceeding related, inter alia, to sexual matters may exclude any persons not directly interested in it (Const., Art. 106(2)(b)); but this power is discretionary.</p>	<p>The need for confidentiality is also a factor in discouraging may people, including LGBTIQ+ Sri Lankans, from seeking justice in courts; on the other hand, where LGBTIQ+ Sri Lankans are defendants in civil actions or criminal prosecutions involving their SOGIESC, they should be entitled to confidentiality of proceedings on the basis of the presumption of innocence.</p>	<ul style="list-style-type: none"> <li>• Review and reform the law surrounding confidentiality of proceedings.</li> </ul>
<p>Victim, witness, defendant and prisoner protection against threats, harassment and other harms.</p>	<p>Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015.</p>	<p>Protection orders are not specified; the Authority is not independent.<sup>194</sup></p>	<ul style="list-style-type: none"> <li>• Review and strengthen the implementation Assistance to and Protection of Victims of Crime and Witnesses Act to ensure it fulfils the purpose of victim and witness protection.</li> </ul>
<p>Justice systems adhere to relevant international standards and comparative jurisprudence</p>	<p>Not explicitly required; but judges to refer to international jurisprudence in some instances of their own volition</p>	<p>There is burgeoning international jurisprudence from all corners of the world, from Asia to Africa to South America, where the contours of the relationship between SOGIESC and human rights are being developed</p>	<ul style="list-style-type: none"> <li>• LGBTIQ+ Sri Lankans should engage with judges and lawyers through institutions such as the Judges Institute or Bar Association on how international jurisprudence could be incorporated through case law.</li> </ul>

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<sup>194</sup> International Truth & Justice Project, 'Putting the Wolf to Guard the Sheep: Sri Lanka's witness protection authority' (2017), available at: <https://itjpsl.com/assets/Sri-Lanka-Witness-Protection-Report.pdf>

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
<b>Accountability: the functioning of justice systems is monitored to guarantee that they are in accordance with the principles of justiciability, availability, accessibility and good quality</b>			
<p>Effective and independent mechanisms are established to observe and monitor access to justice in order to ensure that justice systems are in accordance with the principles of justiciability, availability, accessibility, good quality and effectiveness of remedies.</p>	<p>No such mechanism exists.</p>	<p>See above, generally.</p>	<ul style="list-style-type: none"> <li>• LGBTIQ+ community organisations should, in partnership with other human rights organisations, research and advocate for the creation of such a body in accordance with international best practices adapted for domestic contexts.</li> </ul>
<p>Cases of identified discriminatory practices and acts in the justice sector are effectively addressed through disciplinary and other measures.</p>	<p>No such mechanism exists.</p>	<p>See above, generally.</p>	<ul style="list-style-type: none"> <li>• Amend the HRCSL Act to strengthen its jurisdiction and the enforceability of its recommendations.</li> <li>• Guarantee adequate resources on the basis of internal needs assessments which are not deviated from except with reason.</li> </ul>



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