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— ONE COUNTRY, MANY ARBITRARY LAWS —

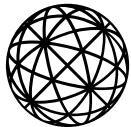
Rethinking Laws and Policies that Leave LGBTIQ+ Sri Lankans Behind

Summary

Dharini Priscilla

Michael Mendis

Pasan Jayasinghe



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GLOSSARY

ART	Assistive Reproductive Technology
CEDAW	Committee on the Elimination of Discrimination of Women
CLG	Company Limited by Guarantee
CSO	Civil Society Organisation
DOL	Department of Labour
EFC	Employers Federation of Ceylon
FHB	Family Health Bureau
FPA	Family Planning Association
FR	Fundamental Rights
GA	Government Agent (District Secretary)
GRC	Gender Recognition Certificate
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
HRCSL	Human Rights Commission of Sri Lanka
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IPV	Intimate Partner Violence
LGBTIQ+	Lesbian, Gay, Bisexual, Trans, Queer/Questioning, Intersex and Other
LLC	Limited Liability Company
MOE	Ministry of Education
MOH	Ministry of Health
MSM	Men who have Sex with Men
NGO	Non-Governmental Organization
NIC	National Identity Card
NSACP	National STD/AIDS Control Programme
PDVA	Prevention of Domestic Violence Act
PHI	Public Health Inspector
RTI	Right to Information
SGBV	Sexual and Gender-Based Violence
SLMA	Sri Lanka Medical Association
SLPC	Sri Lanka Press Council
SOGIESC	Sexual Orientation, Gender Identity and Expression and Sex Characteristics
SRH	Sexual and Reproductive Health
STI	Sexually Transmitted Infection
UDA	Urban Development Authority
UN	United Nations
UNESCO	United Nations Education, Scientific, Cultural Organization

ONE COUNTRY, MANY ARBITRARY LAWS

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 lesbian, gay, bisexual, transgender, intersex, queer/questioning and other (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. These are some of the commonly held perceptions.

Contrary to these common perceptions, however, the reality for LGBTIQ+ Sri Lankans is different. Like anyone else, LGBTIQ+ Sri Lankans go to school, but they do not experience schooling 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 that they are LGBTIQ+, because of the stigma and discrimination they encounter everywhere they go.

THE GAP ANALYSIS EXERCISE

To bridge the distance between common perceptions and the realities of LGBTIQ+ Sri Lankans' lives, a Gap Analysis exercise was conducted. It examines a wide variety of laws and policies in Sri Lanka to demonstrate how LGBTIQ+ Sri Lankans are vulnerable to discrimination across critical areas of everyday life such as education, healthcare and housing. The Gap Analysis examines 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.' The 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'.

The Gap Analysis is organised under specific topics which are further divided 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 'Impact on LGBTIQ+ Sri Lankans'. Drawing from this analysis, 'Ideas for Reforms' are presented to and 'bridge' the gap between the desired ideal and the negative reality experienced by LGBTIQ+ Sri Lankans.

The Gap Analysis is intended to be a resource for all Sri Lankans to understand how LGBTQ+ 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. It is also intended to be a resource for lawmakers, policymakers, public authorities and community leaders. We hope that it will be useful to them in considering changes to the implementation of existing laws and new legal, policy and administrative changes. Such reforms would improve the lives of all Sri Lankans, regardless of their sexual orientations and gender identities.

THE OVERVIEW

This Overview is prepared for the purpose of a quick grasp of the issues discussed and gaps identified during the research process for the Gap Analysis. This document exists for the purpose of summarising the findings of the in-depth Gap Analysis and therefore is neither complete nor exhaustive.

This Overview highlights the 10 topics we focused on in the Gap Analysis exercise. They represent 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.

Under each topic, the Overview highlights the different themes which were produced through a brainstorming exercise by the research team. The themes cover a range of intersections within each topic. The Overview also provides a summary of the ideas of reform discussed more comprehensively in the in-depth Gap Analysis. The Ideas for Reform attempt to envision solutions to the gaps that we identify more than to prescribe specific reforms. They are 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.

Finally, to illustrate the analysis undertaken by this exercise, the Overview presents a few examples of the themes as they are examined in the in-depth Gap Analysis. These show an Ideal Setting under a theme, the relevant Current Settings in Sri Lanka, their Impact on LGBTQ+ Sri Lankans and some Ideas for Reform. In essence, these are snapshots from the in-depth Gap Analysis and invite readers to explore that document more fully.





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.¹

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 places 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.² 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.

¹ Family Health Bureau. (2015). National Youth Survey 2012-2013, available at: 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

5 themes were identified

as areas that require immediate improvement to challenge the current experiences of LGBTIQ+ individuals in educational institutions in Sri Lanka:

Access to accurate information on SOGIESC through the local education curriculum.

Prevention of bullying and harassment based on sexual orientation and gender identities in educational institutions.

Response mechanisms to bullying and harassment based on sexual orientation and gender identities in educational institutions.

Availability of psychosocial support for LGBTIQ+ individuals in educational institutions.

Training and support for educators and staff to approach LGBTIQ+ students and their issues with sensitivity.

In response to these themes and analysis of the experiences of LGBTIQ+ individuals in the education setting, we identified that the Ministry of Health and the 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 two Ministries 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 the Ministry of Education 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.

An example under the “Response mechanisms to bullying and harassment based on sexual orientation and gender identities in educational institutions” theme:

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
Response mechanisms to bullying and harassment based on sexual orientation and gender identities in educational institutions			
<p>Implementation of efficient, effective and non-judgmental interventions to respond to violence within the education sector, including violence based on SOGIESC.³</p>	<p>The Ministry of Education implements educational interventions to combat violence within educational institutions. This includes the existing anti-bullying messaging in the local education curriculum.⁴</p> <p>The 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.⁵</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>The exclusion of LGBTIQ+ individuals and the bullying and harassment they might face in educational settings from any existing local response mechanisms can lead to LGBTIQ+ individuals failing to identify any mistreatment based on their SOGIESC as abuse and harassment.</p>	<ul style="list-style-type: none"> • The 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. • The 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 LGBTIQ+ individuals with sensitivity.

3 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>

4 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

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

HEALTH



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 LGBTIQ+ in the existing education curriculum. Furthermore, training centres and educational institutions for health practitioners do not 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.

3 themes were identified

as areas that require immediate improvement to the current experiences of LGBTQI+ individuals in accessing healthcare:

Quality of physical health services available for LGBTQI+ individuals.

Quality of mental health services available for LGBTQI+ individuals.

Quality of sexual and reproductive health services available for LGBTQI+ individuals.

In response to these themes and analysis of the experiences of LGBTQI+ individuals in the in the healthcare sector, we identified that the Ministry of Health must re-evaluate existing policies on treatment, patient rights and access to sexual and reproductive health 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 ensure LGBTQI+ individuals are treated with dignity and respect in healthcare settings.

An example under the “Quality of mental health services available for LGBTIQ+ individuals” theme:

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
Quality of mental health services available for LGBTIQ+ individuals			
<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.⁶</p>	<p>The Mental Diseases Ordinance holds the Ministry of Health responsible for the provision of mental health services at primary, secondary and tertiary levels.⁷</p> <p>There are multiple government and private organisations that provide mental health support for LGBTIQ+ individuals – including counselling support.⁸</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. 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"> • The Ministry of Health 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. • The Ministry of Education 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.

⁶ 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/>

⁷ Mental Diseases Ordinance, No. 1 of 1873.

⁸ 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>

EMPLOYMENT



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 bias and stereotypes based on gender and sexuality allows companies to improve their talent pool and increase their access to markets.

4 themes were identified

as areas that require immediate improvement to the current experiences of LGBTIQ+ individuals in their world of work:

Discrimination of LGBTIQ+ persons in recruitment, workplace conduct and termination.

Harassment of LGBTIQ+ persons in the workplace.

Discrimination of LGBTIQ+ sex workers.

Employee benefits.

In response to these themes and analysis of the experiences of LGBTIQ+ individuals in the workplace, we identified 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, 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. From a legislative standpoint, anti-discrimination legislation which includes LGBTIQ+ identity as a ground of non-discrimination should be enacted.

An example under the “Harassment of LGBTIQ+ persons in the workplace” theme:

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
Harassment of LGBTIQ+ persons in the workplace			
<p>LGBTIQ+ workers are equally entitled to the right to be free from discrimination at work.⁹</p> <p>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.¹⁰</p>	<p>Many cases of harassment – sexual, verbal, emotional and otherwise, experienced by LGBTIQ+ individuals have been documented by researchers and civil society organisations.¹¹</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>	<ul style="list-style-type: none"> • 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. • The 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.

9 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>

10 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>

11 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)

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.¹² 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.¹³

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.

¹² ICESCR, Article 11(1).

¹³ 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].

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, 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.

6 themes were identified

as areas that require immediate improvement to the current experiences of LGBTIQ+ individuals in housing:

Effective monitoring and strategising.

Accessibility of housing.

Legal security of tenure.

Availability of Services.

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.

Non-discrimination in accessing the right to adequate housing.

In response to these themes and analysis of the experiences of LGBTIQ+ individuals in housing, we identify as reforms 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.

An example under the “Legal security of tenure” theme:

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
Legal security of tenure			
<p>All persons possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment, and other threats.</p>	<p>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.</p>	<p>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.</p>	<ul style="list-style-type: none"> • 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.

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 of family to individuals is recognised internationally and domestically. The International Covenant on Civil and Political Rights recognises that, “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”¹⁴ The Constitution provides that, “[t]he State shall recognise and protect the family as the basic unit of society”.¹⁵

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 reproduces 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

¹⁴ ICCPR, Article 23(1).

¹⁵ Constitution of Sri Lanka, Article 27(12).

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. 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.

5 themes were identified

as areas that require immediate improvement to challenge the current experiences of LGBTIQ+ individuals with regards to relationships:

Recognition of domestic, familial relationships.

Accessing legal privileges necessary for routine life within a domestic, familial relationship.

Raising Children.

Intimate partner violence (IPV) and domestic violence.

Freedom of association and right to privacy in intimate relationships.

In response to these themes and analysis of the experiences of LGBTIQ+ individuals regarding relationships, we identified the need for legal recognition of diverse living arrangements to prevent discrimination based on spousal status; update legislation such as the Penal Code, the Adoption Ordinance and the Domestic Violence Act to prevent criminalisation targeting LGBTIQ+ individuals and expand legal definitions to cover more scenarios and; and sensitise public officials involved in administering matters related to relationships. Outside of government, there is also the need for greater support for relevant civil society organisations to create awareness and conduct research about the domestic and familial relationships of the LGBTIQ+ community.

An example under “Freedom of association and right to privacy in intimate relationships”.

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
Freedom of association and right to privacy in intimate relationships			
<p>The right of all adult individuals to be sexually intimate with other consenting adults acting in private should be guaranteed.</p>	<p>Penal Code offence on gross indecency applies explicitly to consensual acts taking place in private; the offence of carnal intercourse against the order of nature has the same effect (though not explicit).</p>	<p>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.</p>	<ul style="list-style-type: none"> • Repeal all laws criminalising sexually intimate conduct taking place between consenting adults acting in private with each other.

THE ONLINE SPHERE



As of early 2020, Sri Lanka has approximately 10.1 million internet users.¹⁶ The growing internet penetration and increasing reporting of social media incidents to local authorities suggest that Sri Lankans, including those of diverse SOGIESC, are active users of online platforms.

While the internet is an invaluable resource to all Sri Lankans, it must be acknowledged that online platforms are of particular importance to 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.¹⁷ 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.

¹⁶ Kemp, Simon. (2020). Digital Sri Lanka: 2020. Data Report. <https://datareportal.com/reports/digital-2020-sri-lanka>

¹⁷ 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

3 themes were identified

as areas that require immediate improvement to challenge the current experiences of LGBTIQ+ individuals in the online sphere:

Response to online hate speech based on sexual orientation and gender identity.

Response to harassment faced by LGBTIQ+ activists and human rights defenders on online platforms.

Response to image based sexual violence experienced by LGBTIQ+ individuals.

In response to these themes and analysis of the experiences of LGBTIQ+ individuals in the in the online space, we identified 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.

An example under the “Response to online hate speech based on sexual orientation and gender identity” theme:

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTQ+ Persons	Ideas for Reform
Response to online hate speech based on sexual orientation and gender identity			
<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 LGBTQ+ persons.¹⁸</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.¹⁹</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”.²⁰</p> <p>In 2007, Sri Lanka adopted ICCPR Act, section 3 of which is considered as an important legal tool to combat hate speech.²¹</p>	<p>The lack of clear legal provisions to define and respond to hate speech, including that towards LGBTQ+ individuals, increases the occurrence of hate speech incidents faced by the LGBTQ+ population in Sri Lanka.²²</p> <p>The failure of both the law as well as those 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 LGBTQ+ individuals.</p>	<ul style="list-style-type: none"> • 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.

18 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/>

19 Prevention of Terrorism Act, Section 2(1) (h), available at: http://www.vertic.org/media/National_Legislation/

20 Police Ordinance, available at: http://www.defence.lk/Publication/police_act

21 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/>

22 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



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 knowledge upon individuals 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 the public from increasing their awareness about issues related to the LGBTIQ+ individuals. The invisibility of key milestones in the LGBTIQ+ community and the hyper-visibility 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.

3 themes were identified

as areas that require immediate improvement to challenge the current experiences of LGBTIQ+ individuals in creating and consuming media namely:

Censorship of LGBTIQ+ content in local media.

Response to Harassment of LGBTIQ+ individuals in and by media.

Use of LGBTIQ+ sensitive language in media.

In response to these themes and analysis of the experiences of LGBTIQ+ individuals regarding their creation and consumption of media, we identify 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.

An example under the “Censorship of LGBTIQ+ content in local media” theme:

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
Censorship of LGBTIQ+ content in local media			
<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.²³</p>	<p>Freedom of the press in Sri Lanka is guaranteed by Article 14(1)(a) of the Constitution. Sri Lanka Press Council Law holds SLPC responsible for regulating the matters of press in Sri Lanka.²⁴</p> <p>Right to Information Act of 2016 guarantees the right of access to information and transparency.²⁵</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.</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.</p>	<ul style="list-style-type: none"> • 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. • 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.

²³ United Nations. (1948). Universal Declaration of Human Rights, available at: https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

²⁴ Sri Lanka Press Council Law, available at: http://www.commonlii.org/lk/legis/consol_act/slpc378283.pdf

²⁵ 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

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.

Official documentation can be approached 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.”²⁶ 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.²⁷ 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.

²⁶ 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

²⁷ 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>

The theme of the ability of LGBTIQ+ Sri Lankans to have their gender identity legally recognised can be identified as the primary area that requires immediate improvement to challenge the current experiences of LGBTIQ+ individuals with regards to official documentation. In response to this theme and analysis of the experiences of LGBTIQ+ individuals regarding official documentation, we identify that the Gender Recognition Certificate (GRC) process should be revised and simplified so that it can be accessed by more LGBTIQ+ Sri Lankans; public authorities responsible for issuing official documentation should introduce provisions on the sensitive treatment of LGBTIQ+ persons; and schools, universities and educational institutions should move towards loosening official documentation requirements for accessing courses and programmes of study and candidacy at examinations.

An example under the theme of “the ability of LGBTIQ+ Sri Lankans to have their gender identity legally recognised”:

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
Ability of LGBTIQ+ Sri Lankans to have their gender identity legally recognised			
<p>Transgender and gender non-confirming persons are able to have newly-issued birth certificates.</p>	<p>A Gender Recognition Certificate 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. 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"> • The Births and Deaths Registration Act 1954 should be amended to allow for new birth certificates to be issued to persons with a Gender Recognition Certificate.



CIVIC ISSUES AND ENTITLEMENTS

The prospects for LGBTIQ+ Sri Lankans to exercise their civic rights and the institutional barriers that affect the enjoyment of such rights primarily relate to a person's civic identity and status as a citizen within the state and 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 prevents 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.

5 themes were identified

as areas require immediate improvement to challenge the current experiences of LGBTIQ+ individuals regarding civic issues and entitlements:

Participating in electoral politics.

Exercising the right to vote.

Exercising the right to association by forming organisations.

Interacting with public authorities.

The right to privacy and data protection.



In response to these themes and analysis of the experiences of LGBTIQ+ individuals regarding civic issues and entitlements, we identify the need for political parties to recognise LGBTIQ+ members and candidates and commit to non-discrimination towards them and for the Election Commission to revise the annual voter registration process and sensitise election officials to LGBTIQ+ voters so that they are able to cast their votes at polling stations more easily. Further, the Department of the Registrar of Companies and the NGO Secretariat should facilitate the ability of LGBTIQ+-focused civil society and non-governmental organisations to incorporate and operate more easily; and all public authorities should introduce provisions on the sensitive treatment of LGBTIQ+ persons. Finally, 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.

An example under the “Exercising the right to vote” theme:

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
Exercising the right to vote			
LGBTIQ+ Sri Lankans fully exercise their right to vote by being able to cast their votes freely and fairly.	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.	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:	The Election Commission should: <ul style="list-style-type: none"> • Include the GRC as an accepted form of official documentation that can be produced to verify identity at the polling station;

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
Exercising the right to vote			
	<p>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"> • 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; • The second officer to find the name of the voter in the electoral register and announce their name aloud; and • 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. 	<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.²⁸</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>	<ul style="list-style-type: none"> • 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.

²⁸ Election Commission of Sri Lanka, "How To Vote", available at: https://elections.gov.lk/en/elections/elections_how_to_vote_E.html

ACCESS TO JUSTICE



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”.²⁹ 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. However, while certain and meagre legal protections may exist in letter, whether and how they can be accessed by people is relevant in understanding their impact on the human rights of LGBTIQ+ Sri Lankans.

In looking at concerns about access to justice through a ‘queer’ lens, the intersectionality in human rights issues such as the right to access to justice 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.

²⁹ 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>

5 themes were identified

as areas that require immediate improvement to challenge the current experiences of LGBTIQ+ individuals with regards to relationships:

Justiciability: Unhindered access of LGBTIQ+ Sri Lankans to justice as well as their ability and empowerment to claim their human rights.

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.

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.

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.

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.

In response to these themes and analysis of the experiences of LGBTIQ+ individuals regarding civic issues and entitlements, we identify the necessary amendment of a number of aspects of the Constitution. The key lesson here is to be mindful of 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. There is also a need for more support for activists and lawyers to help LGBTIQ+ individuals access the Supreme Court and the Human Rights Commission of Sri Lanka to ensure fundamental rights violations experienced by LGBTIQ+ individuals are documented, represented and pursued by the law.

An example under the “Justiciability: Unhindered access of LGBTIQ+ Sri Lankans to justice as well as their ability and empowerment to claim their human rights” theme:

Ideal Setting	Current Settings in Sri Lanka	Impact on LGBTIQ+ Persons	Ideas for Reform
Justiciability: Unhindered access of LGBTIQ+ Sri Lankans to justice as well as their ability and empowerment to claim their human rights			
Rights and correlative legal provisions are recognised and incorporated in the law.	<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.³⁰</p>	LGBTIQ+ Sri Lankans generally experience high levels of 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"> • Amend the Constitution to include ‘sexual orientation, gender identity and expression, and sex characteristics’ as prohibited grounds of discrimination.

³⁰ 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.

Westminster Foundation for Democracy
22, Whitehall, London, SW1A2EG, United Kingdom

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