

Impact of Sri Lanka's economic crisis on LGBT+ population

Employment

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January 2023

Policy brief

Background

Sri Lanka's economic crisis has been driving millions of people into poverty, jeopardising their fundamental rights and freedoms. The crisis was multi-dimensional and comprised food insecurity, a dire shortage of fuel and transport, loss of livelihoods, shortage of essential medicine and healthcare equipment. By July 2022, Sri Lanka owed more than 51bn US dollars (USD) to foreign lenders, while official foreign reserves dropped to USD 1.82 billion. The UN estimated that, in 2022, 5.7 million people needed humanitarian assistance, with 4.9 million – 22% of the population – being food insecure. According to UNICEF, families were already struggling from the pandemic, with 36% reporting reducing their food consumption, which doubled to 70% in 2022, as the economic crisis hit. Disenfranchised groups, such as women, children, and LGBT+ communities have been disproportionately affected by the crisis, while incidents of sexual and gender-based violence (SGBV) are reportedly increasing.

The crisis adversely affected the basic rights of Sri Lanka's LGBT+ population. During the crisis many LGBT+ people alongside many others lost their means of earning a living. An issue that is compounded for many LGBT+ people given the discrimination and exclusion they continue to face.¹

Objectives

The objective of this policy brief is to assess how Sri Lanka's political upheaval and economic crisis has exacerbated existing structural weaknesses and negatively impacted the rights to work of LGBT+ communities.

LGBT+ communities' access to justice and rights to remedy for human rights violations are cross-cutting themes.

¹<https://womensmajorgroup.org/feminist-collective-statement-on-the-sri-lankan-crisis/>

Methodology

This policy brief was based on literature and field data gathered with qualitative data analysis. The analysed literature covered reports produced by civil society organisations and media outlets on the economic crisis and its impact on LGBT+ communities in Sri Lanka. Further information was gathered through eight Focus Group Discussions (FGD) and eight Key Informant Interviews (KII) conducted across the country, with a representative sample of geographical areas and an intersectional representation across gender identities, sexual orientations, ethnicities, classes, and languages. The questions were open-ended, and participants' safety was protected with the utmost confidentiality. Informed consent was obtained before all discussions. The key issues identified in this paper are those that emerged from the interviews.

Human rights framework

Employment or rather the right to work, is a human right, which states have a fundamental obligation to recognise, protect and fulfil. Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966) obliges "states parties (...) recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right."²

The steps to be taken by a State Party to the present Covenant to achieve the full realisation of this right shall include technical and vocational guidance and training programmes, policies, and techniques to achieve steady economic, social, and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual. The ICESCR goes on to underscore the obligation of state parties "to include technical and vocational guidance and training programmes; policies, and techniques to achieve steady economic, social and cultural development; and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."³

"The Covenant prohibits any discrimination in access to and maintenance of employment on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, or civil, political, social or other status, which has the intention or effect of impairing or nullifying exercise of the right to work on a basis of equality. According to article 2 of ILO Convention No. 111, States parties should "declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof."⁴

² ICESCR 1966 Accessed February 2023

³ Ibid

⁴ General Comment No 18 on the Right to Work <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQfUKxXVsd7Dae%2FCu%2B13J25Nha7I9NlwYZ%2FTm-K57O%2FSr7TB2hbCAidyVu5x7XcqjNXn44LZ52C%2BikX8AGQrVylc> Accessed February 2023

Sri Lanka ratified the ICESCR on June 11, 1980, and consequently has the obligation to “guarantee that the right to work is enjoyed without prejudice or discrimination.

Article 14(1)g of the Constitution of Sri Lanka guarantees that every citizen is entitled to the freedom to engage – as an individual or in association with others – in any lawful occupation, profession, trade, business, or enterprise. The Constitution of Sri Lanka prohibits discrimination on the ground of sex besides many other grounds (Article 12). However, neither the Constitution nor the labour laws provide a provision requiring equal pay for work of equal value. Laws prohibit discrimination against persons with disabilities in matters of employment as well as workers involved in union activities.

Major issues faced by LGBT+ communities during the crisis

Higher level of unemployment due to the pandemic and economic crisis

The informal sector’s contribution to the economy of Sri Lanka is significant. According to the Department of Census and Statistics, it is 58.4% (2021), while according to other reports it is as high as 70% (World Bank, 2020). The majority of the LGBT+ persons interviewed worked in the informal economic sector. Most identified as middle and/or working class. A lack of educational qualifications, harassment, discrimination from wider society amongst others were identified as the reasons for not finding regular employment. According to news reports transgender people found the impact of the crisis particularly acute and yet lacked access to government services. Some of those interviewed also stated that due to societal prejudice they didn’t feel they were able to access community level responses such as soup kitchens.⁵

Increased sexual and gender-based violence (SGBV) in workplaces

Due to a lack of equality before the law and a lack of protection of it, LGBT+ people are often more vulnerable to abuse. Several reports have highlighted that SGBV drastically increased during the pandemic and the economic crisis (UNFPA, 2022).⁶ Precarious employment situations experienced by LGBT+ people were exacerbated by the crisis with some feeling that they had to endure ongoing abuse and harassment in order to keep their jobs and salaries.⁷

⁵ https://www.scmp.com/week-asia/people/article/3190357/sri-lankas-transgender-community-need-life-saving-assistance-amid?module=perpetual_scroll_0&pgtype=article&campaign=3190357

⁶ <https://reliefweb.int/report/sri-lanka/survivors-gender-based-violence-sri-lanka-are-left-without-crucial-services-crisis-deepens>

⁷ <https://adnchronicles.org/2021/11/29/being-trans-can-mean-trouble-in-sri-lankan-workplaces/>

A lack of acceptance in general leads LGBT+ people towards the fear of being outed to colleagues and families, a lack of family support and the real fear of revictimisation and criminalisation have forced LGBT+ people to tolerate more than they should. Some interviewees revealed that, since finding new employment has become rather difficult due to the crisis, many of them decided to quietly tolerate abuse and remain in their jobs. Contributing to the severity of the impact of crisis is the general lack of pro-rights policies that include LGBT+ people in many of Sri Lanka's workplaces. To the contrary in some cases LGBT+ employees that have complained about ill-treatment have been requested to leave their jobs.

"I lodged a complaint at the [relevant authority], because my sexual orientation was taken as a justification for ending my contract. The officer who handled the case interrogated me several times about my relationship with a co-worker."

(Interview with A, identified as gay, Colombo, November 2023)

Reduction of salaries or benefits

During the crisis, many profit-making companies (in the formal and informal sectors) struggled with soaring costs of production, and therefore decided to reduce the salaries and benefits of the employees.⁸ Workers in small- and medium-scale enterprises faced particularly severe pay cuts, while workers who were employed by 'manpower services' received fewer hours of work. Faced in general by anyone at work as a result of the crisis several LGBT+ people, interviewed, highlighted this being a major issue and that they had nowhere to turn to seek solutions.

Lack of access to support services

Perhaps as a measure of how the crisis impacted people working in the informal sector, the crisis had a negative impact on commercial sex work. Sex workers including LGBT+ sex workers were not included in the government's relief and protection programmes. The very real fear of being revictimised prevented many LGBT+ sex workers from reaching out to government support schemes. A lack of a permanent address often meant they couldn't.

"We did not go to meet the Grama Niladhari to seek available government support services, since he knows us as sex workers and we thought he will ridicule us."

(Interviews with X & Y, identified as transgender women, Gampaha, November 2022)

⁸<https://www.bbc.com/news/business-61019270>

Lack of access to legal support against termination of employment

Many of the interviewees felt that they had been dismissed unfairly and yet did not have the financial resources to seek legal remedy. Even when able to seek the support of tribunals many LGBT+ people were conscious of the very real threat of being outed in the process particularly given the lack of professionalism of government run dispute resolution mechanisms. Some approached LGBT+ organisations for legal support however very few specialised in labour law.

Recommendations

- a)** Provide immediate targeted measures to support all vulnerable groups, including LGBT+ persons who lost their work during the economic crisis.
- b)** Increase budgetary allocations for social security for vulnerable groups who lost their means of income during the crisis.
- c)** Professionalise Dispute Resolution Services enabling all marginalised groups access.
- d)** Establish a mechanism through the Legal Aid Commission to provide necessary legal support against unlawful termination of employment.
- e)** Take necessary steps to repeal 365 and 365A of the Penal Code of Sri Lanka, which criminalise same sex intimacy.
- f)** In consultation with trans activists, develop and table a bill for legal gender recognition in Sri Lanka that's based on self-identification to allow trans and non-binary people to change their identification documents enabling their access to employment.
- g)** Recognise commercial sex work as work and ensure protection for sex workers from violence and exploitation, access to better working conditions, and social welfare benefits.
- h)** Strengthen the legal system to hold law enforcement officers accountable for arbitrary and unlawful arrests of sex workers.

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