



**WFD**

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**BEYOND THE DATA**

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**Examining lived experiences of LGBT+ Sri Lankans  
on housing, education, and employment**

*Building on 'One country, many arbitrary laws —  
rethinking laws and policies that leave LGBTIQ+ Sri Lankans behind'*







## Acknowledgements and Disclaimer

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

The report builds on 'One country, many arbitrary laws—rethinking laws and policies that leave LGBTIQ+ Sri Lankans behind' commissioned by WFD in 2021.

WFD would like to thank Michael Mendis for his work in interviewing and collating the lived experiences of LGBT+ Sri Lankans and his legal analysis and recommendations, as well as all of the LGBT+ individuals and activists who dedicated their time to the process.

The views expressed in this report are not necessarily those of or endorsed by the institutions mentioned in the report, WFD or the UK Government, which does not accept responsibility for such views or information or for any reliance placed on them.

My parents brought me up as a boy. I behaved like a boy. I used to run around with the boys and play. No one had any issue, not even the villagers. My mother did not know anything about being trans, but some girls had even propositioned about me to my mother. I am very open with my parents, so I could tell them what I was going through. They were understanding. Even my relatives liked my transition. Even my older sister loves me more now. My younger sister calls me aiya [older brother]. I had a girlfriend, and she couldn't tell her family about me. She wanted us to move to Colombo, but I couldn't leave my family and home. We were engaged to be married this year, but that relationship ended.

- **Trans man, Kegalle District**



## EXECUTIVE SUMMARY

In 2022, Sri Lanka experienced a profound economic crisis that affected everyone. Decades of poor government policy were brought to a crescendo by the COVID-19 pandemic, which dramatically reduced vital sources of tourism-related income and remittances from abroad. In March, the Sri Lankan Government ran out of foreign currency, reducing its capacity to import essential items such as fuel and medicine. Rising inflation, price hikes, rationing of power and long queues for fuel followed. In May, Sri Lanka defaulted on its debt repayments. Economic recovery has been slow and at times stalled. Loans from international financial bodies have been heavily criticised for not being aimed at resolving the rights crisis that closely followed the failure of the economy.

Westminster Foundation for Democracy (WFD) commissioned this report in early 2023 as an addition to its previous work in Sri Lanka, *Rethinking laws and policies that leave LGBTIQ+ Sri Lankans behind*<sup>1</sup> (June 2021) and its 2023 policy briefs on the impact of the economic crisis on LGBT+ Sri Lankans in the areas of housing, education and employment<sup>2</sup>. Qualitative data in the form of respondents' lived experiences populate this report.

<sup>1</sup> Westminster Foundation for Democracy, 'Rethinking laws and policies that leave LGBTIQ+ Sri Lankans behind' <<https://www.wfd.org/what-we-do/resources/rethinking-laws-and-policies-leave-lgbtqi-sri-lankans-behind>> accessed 31 August 2023

<sup>2</sup> Westminster Foundation for Democracy, 'Impact of Sri Lanka's economic crisis on LGBT+ population: Housing' <<https://www.wfd.org/what-we-do/resources/impact-sri-lankas-economic-crisis-lgbt-population-housing>> accessed 31 August 2023; Westminster Foundation for Democracy, 'Impact of Sri Lanka's economic crisis on LGBT+ population: Education' <<https://www.wfd.org/what-we-do/resources/impact-sri-lankas-economic-crisis-lgbt-population-education>> accessed 31 August 2023; Westminster Foundation for Democracy, 'Impact of Sri Lanka's economic crisis on LGBT+ population: Employment' <<https://www.wfd.org/what-we-do/resources/impact-sri-lankas-economic-crisis-lgbt-population-employment>> accessed 31 August 2023

Accounts were collected during in-depth conversations with LGBT+ Sri Lankans from all walks of life. Their narratives represent and illustrate how LGBT+ Sri Lankans experience inadequate legal protections.

First, the report addresses the right to adequate housing by allowing LGBT+ people to explain their own lived experiences of exercising this right. The report then turns to the issue of discrimination in education, directly referencing how LGBT+ people have and are experiencing the education system in Sri Lanka. Lastly, the report discusses the impact of discrimination on LGBT+ people in the workplace, again highlighting lived experiences and how such discrimination affects the most minute details of LGBT+ people's lives.

The findings demonstrate the indivisible nature of human rights. The failure of the state to fulfil the right to adequate housing, particularly of LGBT+ young people, curtails their rights to education and, consequently, to employment. Lack of job security forces many LGBT+ Sri Lankans to earn a living in the informal sector, leaving them unable to obtain secure tenancies, loans or government housing.

All people should be able to live in a place where they are not in danger of eviction. They should also be able to live without fear of any kind of harassment that forces them to leave. Many LGBT+ people do not enjoy this right, particularly when the discrimination they face because of their perceived or known sexual orientation, gender identity, gender expression and/or sex characteristics intersects with inequalities such as economic status, location, and other forms of discrimination.

This report highlights how reductive cultural norms and binaries perpetuated in schools, whether in terms of sexual orientation or gender, reduce LGBT+ students' willingness and/or ability to remain at school. It also highlights how behaviours that don't fit within strict and reductionist gendered stereotypes often result in ridicule, bullying and, in some cases, punishment by faculty. In these cases, there is little to no recourse for the students but to change schools or ultimately leave education altogether.

As with the right to adequate housing, the right to education cannot be addressed in isolation. In pursuing individual dignity and developing the overall economy, the Sri Lankan government must comply with its international human rights obligations. If workplaces strive to fulfil rights such as equality, non-discrimination, and education, among others, they would support the right of every individual to work and to choose an occupation irrespective of how they identify.

The same reductive cultural norms and binaries, perpetuated by the education system, are also found in the workplace and often reduce LGBT+ employees' willingness and/or ability to remain at work. The report also highlights how behaviours that don't fit within strict gendered stereotypes often result in ridicule, harassment and, in some cases, sexual violence by colleagues with little to no recourse for the LGBT+ employee but to seek remedy or other employment.

The legislative framework does little to guarantee the rights of LGBT+ employees. There is nothing in the Constitution of Sri Lanka or any specific law that instructs employers to insist on gendered binaries in matters of dress, appearance, mannerisms and, in some cases, types of employment. If insisting on gendered uniforms, appearance and behaviours can be understood as infringing on the fundamental right to freedom of expression, then, under the Constitution, no law may permit such infringement.

In conclusion, the report makes a series of recommendations for reform in each of these domains. Similar recommendations to those made in the prior reports and policy briefs establish a road map towards LGBT+ equality, beginning with the first logical step: the repeal of sections 365, 365A and 399 of the Sri Lankan Penal Code. Other reforms would include the repeal of other discriminatory legislation that disproportionately affects LGBT+ Sri Lankans. Equality before the law for LGBT+ people in Sri Lanka can only be fulfilled with a law on equality that prohibits discrimination on the grounds of sexual orientation, gender identity and expression and sex characteristics across the board.

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## 01 INTRODUCTION

I now live with my parents. But I can't stay the way I want; I must abide by my parents' rules. They are not very welcoming to my partner [who is a man]. I want to move out, but I am not financially stable enough to do that yet ... I have an older brother, but he is married and doesn't live at home anymore. It is just me, my mother and father. My brother used to be my caretaker and protector. He is the one who would scold me. Even though he behaves like my father, we are very close. I am not out to my family, but I think my brother has got a few clues. My brother is the only one who knows I work with the LGBT+ community, and he supports that work. But I am scared to come out to him. What if he reacts badly? Then he will tell my parents and I might lose my freedom. My parents control me a lot more than my brother.

**- Bisexual woman, Colombo suburb**



The purpose of this study, commissioned by Westminster Foundation for Democracy (WFD), is to understand the relationship between the discrimination LGBT+ Sri Lankans experience and the protection the state offers through the equality established by law and policy.

This report attempts to create a snapshot of LGBT+ Sri Lankans' lived experiences of the legal framework in the country. It focuses on the rights to adequate housing, education and employment and touches on the challenges faced by LGBT+ people in exercising the full spectrum of human rights. More than 60 LGBT+ people contributed to the development of this report, deepening the understanding of how prejudice and discrimination affect their basic human rights and how the legal framework and its poor implementation exacerbate discriminatory practices. Perhaps most telling of how the law in Sri Lanka fails to protect LGBT+ people is the absence of personal testimony about seeking legal redress. Instead, interviewees spoke of revictimisation by those mandated to enforce law and policy.

This report is divided into three sections: housing, education, and employment. Each section recounts the experiences of LGBT+ Sri Lankans and how a backdrop of criminalised identities and expressions prevents all but the most privileged LGBT+ people from seeking redress. Recommendations for reform end each section and are to be read as calls to action for policy makers and other allies.



## 02 METHODOLOGY

This report is qualitative. Through a series of nine semi-structured group discussions with nearly 60 LGBT+ Sri Lankans held across four of the country's districts, it explores the three themes of housing, education, and employment through personal testimony. The discussions were in either Sinhala or Tamil. Participants ranged in age from early 20s to 60s. The majority benefitted from secondary or even tertiary education, though some had been forced to leave school early. Most had grown up outside the main urban areas but had migrated with the promise of better opportunities. Most were in precarious economic situations, being either under- or unemployed.

The discussions were held in Colombo, Galle, Jaffna, and Batticaloa. Of the nine discussions, five were held in Colombo, two in Jaffna, and one each in Batticaloa and Galle. The discussions held in Colombo were identity-specific: cis queer men; cis queer women; trans men; and trans women. Discussions held outside Colombo were open to anyone identifying as LGBT+<sup>3</sup>. Only two participants explicitly identified as Muslim. No persons with a disability participated in the discussions.

This report is to be read alongside previous work commissioned by WFD, *One country, many arbitrary laws: rethinking laws and policies that leave LGBTIQ+ Sri Lankans behind* (June 2021). This report aims to compliment that report with personal testimonies that further evidence the failings of the legal system in Sri Lanka.

Excerpts from the first-person accounts collected through the fieldwork are presented in English. In some instances, they are summarised. The report does not present all of the narratives shared in the discussions; where participants shared similar stories, an emblematic story often stands in for others it represents. The report aims to disclose gaps in the state's appreciation or understanding of difficulties LGBT+ Sri Lankans face and the failings of the law to protect their rights that these difficulties reveal.

The report has been reviewed by an attorney-at-law in Sri Lanka for accuracy.

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<sup>3</sup> Of the 55 participants, 18 identified as cis men, 4 identified as cis women, 7 identified as trans men, 23 identified as trans women, and 3 identified as non-binary or genderqueer.

## 2.1 Overarching Recommendations

- I. The Sri Lankan government should table concrete proposals for reforms in all necessary areas of law and policy, with a strict timeframe for public consultation and discussion, amendments to proposals, and final adoption. The reform proposals should include:
  - a) Repeal of Sections 365, 365A, and 399 of the Penal Code,
  - b) Repeal of the Vagrants' Ordinance and any other discriminatory legislation that disproportionately impacts LGBT+ Sri Lankans, and
  - c) A comprehensive law on equality, including the prohibition of discrimination by non-State actors; such a law should explicitly include sexual orientation and gender identity as prohibited grounds of discrimination.

## 03 HOUSING

I have the perfect home now. I live with my mother. I have the freedom to live the way I want. I am 45 years old now. We had many issues at home, but we put up with them and had patience to deal with our families. We did not take quick and impulsive decisions like the younger generation now. I live in Boralesgamuwa. I never had to leave home. My sisters accept me, but my brother does not accept me. I have not spoken to him for about 20 to 25 years now. My siblings are all married, and they have left home, so I live alone with my mother and take care of her; my father passed away 12 years ago. I help all my siblings. I have a good relationship with my sisters' children as well. Even my brother, though he doesn't speak to me, asks for my help with money through my mother. He never asks me directly, but I still help him whenever I can when my mother lets me know about it.

**- Trans woman, Colombo suburb**



### 3.1 Legal framework on the protection of the rights to adequate housing

The right to adequate housing is central to human dignity. The Universal Declaration of Human Rights recognises this right as an element of the right to an adequate standard of living declared in Article 25:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The right to adequate housing goes beyond having a roof over one's head. It also encompasses the quality of the dwelling. The Committee on Economic, Social and Cultural Rights has identified seven specific attributes of the right to adequate housing:

1. legal security of tenure;
2. affordability;
3. availability of essential facilities;
4. habitability;
5. accessibility;
6. appropriateness of location; and
7. cultural adequacy.

Only if a person's place of dwelling fulfils all these attributes can it be said that the occupant fully enjoys their right to adequate housing<sup>4</sup>. In the fieldwork discussions, however, not all these standards received equal emphasis. As such, this section will focus on the first five of the standards mentioned above.

In realising human rights standards for adequate housing, the state must ensure that all people are treated equally in their enjoyment of all seven standards. Where patterns of inadequate standards in housing affect especially vulnerable groups and communities, this indicates systemic flaws in the whole edifice of housing law and policy which call for reformative interventions by the state. Failure to do so gives rise to discrimination.

### **3.1.1 Constitutional guarantee of the right to equality and non-discrimination**

Article 12 of the Constitution of Sri Lanka provides that:

1. All persons are equal before the law and are entitled to the equal protection of the law.
2. No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds:

The Constitution of Sri Lanka does not explicitly recognise the right to adequate housing within the fundamental rights chapter. The Chapter on Directive Principles of State Policy, however, recognises that the realisation of an adequate standard of living for all citizens as a principle the state is pledged to establish.

### **3.1.2 The Yogyakarta Principles**

In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of principles relating to sexual orientation and gender identity. The result was the Yogyakarta Principles, a universal guide to human rights which affirms binding international legal standards with which all states parties must comply. The principles promise a different future where all people, born free and equal in dignity and rights, can fulfil that precious birthright.

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<sup>4</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, para 8

Principal 15 sets out the Right to Adequate Housing<sup>5</sup>:

Everyone has the right to adequate housing, including protection from eviction, without discrimination on the basis of sexual orientation or gender identity.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure security of tenure and access to affordable, habitable, accessible, culturally appropriate and safe housing, including shelters and other emergency accommodation, without discrimination on the basis of sexual orientation, gender identity or marital or family status;
- b) Take all necessary legislative, administrative and other measures to prohibit the execution of evictions that are not in conformity with their international human rights obligations; and ensure that adequate and effective legal or other appropriate remedies are available to any person claiming that a right to protection against forced evictions has been violated or is under threat of violation, including the right to resettlement, which includes the right to alternative land of better or equal quality and to adequate housing, without discrimination on the basis of sexual orientation, gender identity or marital or family status;
- c) Ensure equal rights to land and home ownership and inheritance without discrimination on the basis of sexual orientation or gender identity;
- d) Establish social programmes, including support programmes, to address factors relating to sexual orientation and gender identity that increase vulnerability to homelessness, especially for children and young people, including social exclusion, domestic and other forms of violence, discrimination, lack of financial independence, and rejection by families or cultural communities, as well as to promote schemes of neighbourhood support and security;

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<sup>5</sup>Yogyakarta Principles, 'Principle 15: The right to adequate housing' <<https://yogyakartaprinciples.org/principle-15/>> accessed 15 May 2023

## 3.2 Cultural Factors

For cultural and economic reasons, most Sri Lankans live with their family at least until marriage, and some may remain in the family home even afterwards. Not all LGBT+ Sri Lankans can live this way, as cultural norms often create undue restrictions and surveillance in the family home. Restrictions that deprive people of a sense of privacy, of being able to express themselves freely, and of a consequent sense of security:

My father doesn't live with us anymore and I don't talk to him. Recently, he had seen my profile pictures dressed in feminine clothes and called me to question me about them. He called me *ponnaya* [derogatory term for queer or effeminate man] and *wesa gani* [meaning, roughly 'whore']. I told him those terms don't apply to me, they apply to him, and that if he is enjoying his life, I will also enjoy my life the way I want, and that he should stay out of it. He wasn't there for me when I needed a father, and I didn't need a father anymore. Another aunt had called my mother and scolded her, asking about the photos I upload on the internet, and had tried to convince my mother to disown me. My mother put her foot down and asked her to stay out of our family's private matters. My mother had said that she accepts me the way I am and how I am is nobody else's business.

**- Non-binary person, Colombo**



LGBT+ Sri Lankans may be subject to domestic abuse. Some may also find themselves forced out of their homes by family members:

I came to understand who I am—that I am trans—while I was still in school. I tried for a long time to explain to my family about who I am. I even attempted suicide. But my family insisted that I must live as a man, that they won't allow me to transition. While I lived with them, they tried to control me, they imposed a lot of rules on me. They said they will arrange for my marriage and provide for all my needs to live as a married man. They said that if I want to live as a woman, they prefer that I die, that I should kill myself instead. When they told me this, I decided to run away. I waited for everyone to fall asleep and sneaked out of the house in the dark of the night. It's been about 18 years. I have never returned since then. They have garlanded a framed photo of me in the living room. It means I am dead to them. I still run into people from my family occasionally in Jaffna town, but they don't acknowledge me, and I also don't acknowledge them; we walk on as if we are strangers. *Cont-*



*Cont-* My elder sister and I were always close. She had tried to kill herself when I ran away from home. By the time she was to get married, I had pretty much completed my transition. She came to see me before her wedding, she told me that I am her little brother and that she wanted me there at the wedding, to send her off according to the rites that the brother usually performs. I too had had many dreams of sending her off in marriage one day. She worried that our family would not let me attend the wedding as a woman, so she asked me to come as a man, that she would buy me a suit to wear. But I couldn't do it. So, I met her before the wedding and told her so. I told her I wished her every happiness, that she would have a good life, but that I couldn't come to the wedding as someone else. We held each other and cried that day ... she and I were both raised by our grandmother, because our parents had to work in different places, but even when our grandmother died, I couldn't go to her funeral. I never got to say goodbye.

**- Trans woman, Jaffna**



Another trans woman, now living in Colombo, described how her mother tried multiple times to chase her from their home after she finished school and began her transition:

My mother used to beat me and shout at me every day. She would take my clothes and throw them out of the house. But I refused to leave. I let her do or say whatever she wanted, but I refused to leave. We went on like that for a very long time, fighting with each other all day, her trying to chase me and me refusing to leave. Eventually, she gave up. I still live with her now, almost a decade later. Now she accepts me, she even calls me daughter now.

Family housing arrangements are predominantly determined by economic factors, and the ability to remain in the family home is an important source of stability and security for most Sri Lankans. A person may feel dutybound to remain within the family home, especially where their parents or other family members need care or financial support or some other form of assistance. The absence of a robust (universal) system of social protection often translates into adult children being the main source of care and protection for elderly or dependent relatives.

A major challenge to relationships between LGBT+ people and their immediate families in Sri Lanka is the pressure coming from external parties, such as relatives and neighbours:

My parents know about me, but my mother does not want me to tell everyone. They don't totally accept me, but they love me and want me to live my life. She doesn't want to explain things to the extended family. My father was very strict. When he got to know about me being gay, he took me to church and sent me to conversion camp at church. But my mother had no issues.

**- Gay man, Galle**



Cultural values can also affect how LGBT+ people enjoy their rights within the confines of the family home:

I used to live with my older sister and there were issues when I come home late and go certain places. Because of this I needed to move out ... I have never had a place that felt like my own. Our family has moved all over the place, almost always lived in rented houses. Two of my older sisters got married and moved to Australia. My parents also moved to Australia to live with them. At that time, I lived with my third older sister here ... The time I lived with my sister was not a good time. That was the time I met my [male] partner and many friends from the LGBT+ community. I felt like I was sneaking around all the time. Someone always felt that they needed to be responsible for me as an unmarried woman. My sister and her husband felt that responsibility. It was a burden for me. I always had to hide my queerness at home. Even as a child, I loved wearing boys' shirts, but my mother would comment on that negatively. They have never questioned me directly, but I think they had some suspicions.

My second sister knows about me, and she is fine with it, but the others in my family are very conservative. I can't even imagine coming out to them. Now I don't care if anyone finds out about me, as long as it's not anyone in my family. We are a very close-knit family, and I love them very much, but I want to be in a long-distance relationship with them, so that there are fewer issues. Finding my independence was the best thing that happened to me, even though I still struggle sometimes.

**- Bisexual woman, Ratnapura**





On leaving the family home, many LGBT+ Sri Lankans continue to face prejudice and discrimination when attempting to find accommodation for themselves. Cultural prejudice and stereotyping can often lead to LGBT+ people being rejected by property owners, landlords, housing agencies and financial services.

One of the participants—who describes herself as a woman who generally wears masculine clothes, keeps her hair short, and rides a motorbike—explained how, when searching for a place to live, she would make an appointment with a prospective landlord, but upon arriving, they would look her up and down and say, “Sorry, we’ve already given the place to someone else.”

A participant in one of the Colombo discussions who left home due to his father’s constant abuse, highlights some of the difficulties in finding a place to rent:

When I was looking for places, the rental classifieds always have these criteria, like boys only or girls only or married couples only, etc. I mostly went to places that said, ‘boys only,’ and the current place I am at was also advertised for boys only. Sometimes when you go to meet a potential landlord, they ask you all sorts of questions. They ask me about my job, and when I tell them I work at a non-profit, they ask me why I am working at a non-profit. They ask me where I live, my age, whether I am married, what time I will come home after work. Most places have a curfew to come home by, usually if you’re not home by around eight in the night, they will lock the gate and you will be stuck outside. When they asked me so many questions about my work, I was uncomfortable, because I work at an LGBT+ community organisation. They also ask why I am looking for a boarding place and where my home is. Luckily, I can say my hometown is Kandy and that would end the questions; I don’t have to get into the issues about why I had to leave Kandy.

**- Gay man, Colombo**

We know places where rooms with more amenities are available at cheaper rates, but when a trans person asks to stay in such a place, even a room with fewer facilities in the same building is much more expensive. Landlords know that trans people can’t find boarding easily, so they take advantage of that ...

A friend of ours was renting a place, it was a half-built room with no proper roof or walls, but she was charged 15,000 rupees per month for it. She had no other choice, because every other place she went to had refused, so this was the only place she could stay. But the place wasn’t worth the amount at all...

**- Trans women, Colombo**



Bullying and harassment at school or abuse at home can often cause LGBT+ people to truncate their schooling experience. The impact of leaving school early then has knock-on effects on being able to find work. Social stigma, cultural prejudice and consequent discrimination again restrict employment prospects. Underemployment or unstable employment influence how LGBT+ people are regarded as prospective tenants or lodgers by landlords; influences that exist alongside societal stereotyping of LGBT+ people and the prejudice and discrimination they face.

Obviously, socio-economic status also affects the process of finding adequate housing to rent:

After graduating from school, I moved to India to study classical dancing, and that's where I started transitioning. I only returned to Sri Lanka very recently, but since then I have been living in rented housing. Till now, I have lived in three different places. At the first place I moved into, the owners already knew me since before my transition. Even the current landlord knows I am trans. I've never had any problems with rented housing.

**- Trans woman, Colombo**



Social stigma, cultural prejudice and discrimination extend into the ways LGBT+ people, forced to leave the family home, can survive:

My father died suddenly when I was about 16 or 17. When he was alive, our home was like a zoo, full of a variety of pet animals; there were turkeys and goats and all kinds of animals. Not long after my father died, my brother wanted to sell the animals to the butchers so he could buy a motorbike with the money. But I opposed the idea, and so we had a big fight. He hit me and I got sick. But the next day, I think the butchers had come, I was so angry, I broke a bottle and threatened to stab him with it. My mother brought my clothes in a bag and told me to take everything and leave. This was barely two weeks after my father's funeral. There was nothing to do, I had no place of my own to go to, so I took my things and went to my father's ancestral home.

My mother kicked me out because I had disrespected my brother, she couldn't bear the thought that I would challenge him for anything. When she had to choose between her son and daughter, she chose her son. It hurts that my own mother put me out on the streets. I am a girl; how could she do that to her own daughter? My uncle told me I could come live with them in my father's ancestral home, so I moved there. My father's unmarried sisters also lived there, and they hated me for being so masculine. I helped with the household chores, but everything I did was wrong. My aunts were scolding me all the time. *Cont-*

*Cont-* I wanted to get out of there, so I enlisted in the army. But my family didn't want me to join the army, so they hid the letters that came for me. I couldn't join the army, so I joined a garment factory in Dehiwala. There were so many problems at the factory, too. Everybody hated me because of the way I was, but I was a fighter. I fought back whenever someone was unfair to me. From that point, I learned to take care of myself.

**- Queer woman, Colombo**



One of the participants related being repeatedly evicted from the family home. They were unable to find suitable accommodation, and they began doing sex work to survive:

My mother built a small house, but she never told me to come there. She built the house and went back abroad, but before she left, she left the key in the care of one of her brothers (my uncle), with instructions to hand over the house to me. But when she left the country, my uncle gave that house out to rent. When I found out about this, I went by his place to ask him about it, but he beat me up so viciously that I was bleeding from an eye. He said he could do anything he wanted with his sister's property. When I told him that I had nowhere to go, he said to do whatever I want. I kept quiet and left. That's when I decided to do sex work. The first time I earned money through sex, it was just a thousand rupees, but I had never had any money before, so it was a huge thing for me. I had nowhere to put it, but I was so happy.

**- Trans woman, Colombo**



Once they find a place, some LGBT+ people experience insecurity of tenure. Unlawful evictions happen at the hands of family members, cohabitants, neighbours, landlords, or even local authorities:

I was turned away from home when I was 14 years old. My parents were divorced, and my mother moved to the Maldives and remarried when I was three months old. I grew up with my grandmother. My father is a drug user, so he was out of the picture. Around age 14, my family started realising that I was different. Everybody loved my elder brother, but nobody wanted me. My mother arranged for my brother to fly to the Maldives to live with her, but not me. Instead, when I was 14, she told my grandmother to let me go, to let me figure out my situation on my own...

**- Trans woman, Colombo**



In Colombo, another trans woman told the story of a friend of hers:

I clearly remember how she was kicked out. It was when she began her transition. The landlady told her one morning to be gone by the evening. She couldn't find a place in time, but she had to pack up her things and leave the place. Luckily, she managed to find a friend to stay with for the night, and by the next day she managed to find an alternative place. But for some time, she was out on the road with nowhere to go.

The right to adequate housing includes security of tenure. Failure to protect this right curtails the enjoyment of other rights, particularly the right to health. Evident in the discussions was a clear correlation between the economic status of the LGBT+ individual and the adequacy of the accommodation available. Many said they live in constant fear of eviction or of being charged higher rates for inadequate housing.

Though some general legal protections exist in the field of housing, many LGBT+ Sri Lankans are unaware of these measures. Even if there is awareness, affordable legal services are few and far between. The justice system in Sri Lanka is often marred by perceived or lived experience of secondary victimisation, limiting LGBT+ individuals' trust in the very system created to protect rights.

The right to adequate housing, includes the availability of a minimum of amenities to ensure an adequate standard of well-being. The poor quality of housing available for the majority of LGBT+ Sri Lankans and the difficulty in enforcing rental agreements, where they exist left many struggling to live in the accommodation they have found:

The place I am staying in has no kitchen. It's just a bunch of single bedrooms with separate entrances. I asked them to make a small kitchen space for me, but they won't do it. That's a huge issue for me. I cook for myself, I would feel very free if I had a kitchen, but I am only allowed to cook in my room, which is very inconvenient because I must bring water from an upstairs tap. Even though I have a bathroom attached to my room, I don't feel comfortable using that water for cooking. So, I am too lazy to cook most days, which is a problem, because it costs more to buy food from outside.

- **Gay man, Colombo**



Where amenities do exist, LGBT+ people are often charged a higher rate than their non-LGBT+ peers:

Our place also sources water from a well, but he still charges 350 rupees for the water. He charges 55 rupees per unit for electricity, which is very unfair because it is a flat rate, but I don't say anything. I know of places where the electricity is free, but they don't accept us.

**- Two trans women, Colombo**



To be adequate, housing must also be safe. Many participants in the discussions described a lack of safety in their rented homes:

I have always told houseowners that my partner will be visiting because I want to make that clear. Based on their reaction, I can gauge whether I want to live there or not. I had some issues with a previous landlord who was a pervert. He knew I was not married to my partner and that he visits me often, so he would come into the house uninvited while I was alone ... He would message inappropriate things like 'you have nice boobs.' He is a married man. We left that place because I did not feel safe, and I could not stay home alone; we knew it was not a place for us.

**- Pansexual and polyamorous woman, Colombo**

I first started renting places when I moved to Biyagama in May 2019 to join a garment factory and begin my transition. I stayed in the company hostel those initial months. But, eventually, the COVID-19 pandemic began, and we were all asked to vacate the hostel. But I had begun my transition, so I couldn't go home for the pandemic. That's when my troubles began. I had nowhere to go. I first moved into a colleague's home for the time being, but I could only stay there about two months, because the bathing facilities were outside the house, and they had a big son doing his Advanced Levels, and his friends would always come and go, so I wasn't very comfortable there. It was very cheap, just 4,000 rupees per month, but I had to move out ... After that, I moved to a place in Kindelpitiya, which was very far. The owners didn't know I was trans initially, but the man used to peep at me when I was using the bathroom; I think they figured me out eventually.

**- Trans woman, Colombo**

Cont-



*Cont-*

Once I lived in a place with my boyfriend. We were living in one portion and some other trans women lived in the other portion. The house owner also lived nearby with his family. One day, he came home drunk and started yelling at us, saying we were ponnayo [queer; derogatory] again and again. There was no reason for his shouting, it was just fun for him to do that. I didn't want to stand it, so I shouted back at him. Then his wife emerged and also started yelling, so it went even further. I shouted at them saying we weren't staying there for free, we were paying rent. They wanted to act as if we were there on their charity, but I said, if we have money there are enough places to live in. Within a week, I vacated the place with my boyfriend. But the others stayed on.

**- Trans woman, Colombo**



The same participant also described how, when some male neighbours found out that a group of trans women were living together, they started sexually harassing them:

Once, a group of men living nearby got really drunk and came to our home. They wanted to have sex with us. We locked up the doors and stayed inside. Eventually we fell asleep. The men got so frustrated, they filled buckets with filthy water and threw it at us through the windows. It was terrifying. There was a lot of damage.

**- Trans woman, Colombo**



Two trans women from the north, who used to share a rented room, described how they were forced by their landlord to have sex with various men. Once, a policeman arrived at their home with a gun and forced one of them to have sex with him. He also soon called another policeman friend of his and forced the other woman to sleep with him. The landlord was in the habit of introducing them to local politicians and other powerful figures, who would return in the night to force themselves on the women. When the two could no longer bear it, they left.

Due to the precarious nature of housing for many LGBT+ Sri Lankans, the availability of temporary, emergency accommodation is vital. Several local LGBT+ advocacy organisations provide safe houses and related services. Many trans women described situations when they or their friends suddenly had no place to stay. However, though many of them knew about organisations providing safe houses, none of them mentioned availing themselves of such services when they needed emergency shelter.

A trans masculine participant from Galle described how he tricked his family into thinking he was going abroad and moved into a safe house to begin his transition. He had no complaints about the place. Another trans man moved into the same safe house and felt the services could have been more professional:

I stayed at [that] safe house for four months. It has many visitors. Though we were allowed to stay, there is a lot of emphasis on solving our issues and leaving as soon as possible. The head of the organisation made it clear we could not stay there in the long term. There were issues with the staff, who were always staying at the safe house, and were not happy about us staying there. It didn't feel like a safe house. We didn't even have beds. The staff also uses the house for personal matters, to bring partners, etc. But they didn't let our partners visit us. We went there for help; I needed a place to stay while I faced the surgery. I was very scared. My surgery was complicated. Still, the head of the place made me find a job, and I had to work in a bakery. It was hard on my recovery. Eventually, I had to stop working there.

**- Trans man, Galle**



### 3.3 Conclusions and Recommendations

All people should be able to live in a place where they are not in danger of being evicted. They should also be able to live without the fear of any kind of harassment that forces them to leave. Many LGBT+ people do not enjoy this right, particularly when the discrimination they face because of their perceived or known sexual orientation, gender identity, gender expression and/or sex characteristics intersects with inequalities such as economic status, location, education, employment and so on. Many live in informal tenancy arrangements. Where there is some form of written agreement, there is little chance of enforcing it.

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 characteristics. Though Article 12(3) of the Constitution prohibits the denial to any person of access to shops, hotels, restaurants, and so on, based on prohibited grounds of discrimination such as race, religion, sex, and others, this prohibition does not include buildings on the market for sale or rent. In practice, it is common for classified advertisements for properties available to buy or rent to openly state preferences as to race, religion, sex, professional status, marital status and other matters. Such criteria have disparate impacts on various at-risk groups, including LGBT+ Sri Lankans.

Some of these preferences are based on arbitrary stereotypes that unfairly deprive those who need it of housing. Adequate housing should be accessible to all. LGBT+ people experiencing multiple and intersecting forms of discrimination should be afforded adequate housing that meets their needs. Housing law and policy should take full account of these intersecting housing needs of LGBT+ people.

### **3.3.1 Recommendations**

#### **1. Dispossession of one's home in general**

- I) All forms of forced evictions and other disturbances of persons' peaceful occupation of their dwelling (whether owned, rented, or borrowed) should be criminalised.
- II) Provide human rights-based sensitivity training to police, both at the academy level and as part of their continuing professional development, highlighting the special nature of dispossession and eviction of vulnerable groups such as LGBT+ Sri Lankans.
- III) The National Police Commission should formally monitor the proportion of the police force receiving such sensitivity training, making public its progress, with a view to bridging the gap between trained and untrained police officers within a specified timeframe.

#### **2. Dispossession of the family home**

- I) Any LGBT+ individual, of whatever age, dispossessed of their family home should have the option of seeking resolution for any family dispute resulting in that dispossession through appropriate and accessible mental health and psychosocial support (MHPSS).
- II) Local administrative officials, including, especially, the Gramasevaka Niladari, should have responsibility for resolving any family disputes resulting in a dispossession of the family home by referring such matters to appropriate MHPSS services.
- III) Where reinstatement to a dispossessed home is inconsistent with the best interests and welfare of any of its inhabitants, including the person dispossessed, the state should make available a process through which the person in question can access appropriate assistance, including emergency shelter or alternative housing.



- IV) To provide emergency shelter and alternative housing, the state should build partnerships with appropriate civil society and community organisations. Such partnerships should be conditioned by minimum standards of service to be satisfied by the relevant organisations.
- V) Ensure that the Primary Court procedure, which makes mandatory the police officer's obligation to record any complaints of evictions or other forms of dispossession of a place of dwelling, is enforced - even where the complainant decides not to act upon such complaints. Ensure that no discrimination against LGBT+ people, due to their identity, takes place when recording such complaints.
- VI) Where referral to MHPSS services is available, the first response of the police should be to refer the person dispossessed to such services and seek advice on further action. All such MHPSS services should be in line with applicable global standards.
- VII) Where health-based responses are exhausted, the police should be obliged to refer the matter to the relevant Court for due disposal.
- VIII) The parliament should reform all relevant laws, including the Judicature Acts, as necessary to ensure that courts are equipped to handle matters of dispossession in a sensitive manner, in line with the state's obligations under the international law of children's human rights, as well as general human rights.
- IX) Lower-court judges should undergo training in handling such matters with sensitivity and in line with applicable human rights standards.

### **3. The human rights of LGBT+ tenants**

- I) Reinstatement of the Rent Act (No. 7 of 1972) with full force and applicable to the whole of Sri Lanka, including any residential premises constructed on any date.
- II) Implement the Rent Register provided for in s 37 of the Act, whereby landlords are compelled to register any properties available for rent with the Rent Board in the local area in which such a property is situated.
- III) In registering their properties with the Rent Board, landlords should specify the rent amount applicable to each unit. Charging an amount higher than the amount registered with the Board should be illegal and incur penalties, including compensation and/or restitution to a tenant who paid an increased amount for any period of time.

- IV) Rent amounts should be subject to approval by the Board. In approving such amounts, the Board should comply with guidelines to be developed by the Commissioner of National Housing.
- V) Such guidelines should ensure that rent amounts are always commensurate with the amenities and overall quality of the premises to be rented in light of all applicable factors prevalent within the renting market.
- VI) In registering properties with the board, landlords should specify any preferences related to characteristics of prospective tenants, along with relevant and sufficient reasons for such preferences. Preferences should be subject to approval by the board, who will assess them for human rights compliance, including all applicable non-discrimination laws and policies, before approving them.
- VII) Refusal of any written (or otherwise recorded) offer of tenancy by any person satisfying (or who does not negate) the approved preferences of a landlord should be illegal and liable for appropriate remedies, including compensation.
- VIII) The ejectment or eviction (forced, constructive, or otherwise) of a tenant should be illegal, liable to criminal sanctions as well as civil liabilities, such as the restitution of previously paid rent amounts.
- IX) Landlords should be able to apply to the local Rent Board for permission to eject a tenant in arrears in excess of three months' rent, provided that, in all cases, the tenant to be evicted is given sufficient notice.
- X) The applicable period of notice should be prescribed by law and apply to all tenants uniformly.
- XI) Make explicit that the stoppage of usual amenities and services, as well as other forms of harassment attributable to a landlord, is a derivative form of ejectment.
- XII) Introduce new provisions in the Rent Act on the right of each tenant to privacy and adequate housing and to enjoy the lawful use of rented premises without unnecessary surveillance or interference by landlords and co-tenants. These conditions should be implied in all rent agreements by statutory operation and should be inalienable/non-waivable.
- XIII) 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.

XIV) Define duties of protection falling on landlords regarding harassment of tenants by co-tenants and neighbours.

A story of acceptance from one of the gay participants in the research in Homagama, a semi-rural town in the Colombo district:

I currently live with my family in Homagama, but I rarely stay home. On many days, I tend to sleepover with friends closer to Colombo for convenience. I have my total freedom; nobody bothers me at home. They check on me all the time to make sure I am okay, but they still respect my boundaries. They don't even enter my bedroom without asking. When Manoj and I started dating, I asked my family if it's okay if he came to live with us in our home. I told them we were in a relationship. They had no problem with it. Everyone in the village knew we were partners, even the neighbours and the shopkeeper near our home knew about our relationship. Nobody had a problem with it. Even after we broke up, my family wanted him to stay with us for as long as he needed, and he is still living with us.

**- Gay man, Colombo suburbs**



## 04 EDUCATION

I had no issues until Advanced Levels [ALs]. But I started having issues when new students joined in those years. Because of them, even my old friends started questioning me and asking me why I hang out with trans and gay students. I was not out, but they started labelling me. Then there were many sexual advances, but because I didn't go with them, they started spreading false rumours about me. I couldn't take the harassment. It became an issue. They started bullying me, in the classroom and on social media. I could not go to school, so I stopped doing ALs. I had to face everything alone. School complained to my mother, and she defended me, but they did not understand. My mother knew I really loved learning languages, so she wanted me to go to school, but I couldn't continue.

- **Queer man, Galle**



### 4.1 Legal framework on the Protection of the Right to Education

Article 26 of the Universal Declaration of Human Rights affirms that everyone has the right to education and that education should be free and accessible for all. The UDHR also states that the main purpose of education should be the development of the human personality, and promotion of respect for human rights and fundamental freedoms.<sup>6</sup>

The Convention on Economic, Social and Cultural Rights (ICESCR 1966), ratified by Sri Lanka in 1980, goes on, under Article 13, to establish that education is fundamental to an individual's sense of dignity:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms.<sup>7</sup>

<sup>6</sup> Article 26:

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

<sup>7</sup> Article 13

The Committee on Economic, Social and Cultural Rights through General Comment No. 13 goes on to address standards in the application of the right to education concerning availability, accessibility, acceptability, and adaptation.<sup>8</sup>

Legal scholars regard the right to education as progressive in the sense that there is an understanding that fulfilment of the right has a budgetary impact and, for that reason, states are permitted to incrementally work towards compliance with their obligations. Article 32 General Comment No. 13 stipulates that any specific measures needed to ensure the availability, accessibility, acceptability and adaptability of the provision of the right to education are permissible. An important matter when thinking about how to better promote the rights of LGBT+ people within the education system is set out in Article 32:

The adoption of temporary special measures intended to bring about de facto equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved.<sup>9</sup>

In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to sexual orientation and gender identity. The result was the Yogyakarta Principles: a universal guide to human rights which affirm binding international legal standards with which all states parties must comply. They promise a different future where all people, born free and equal in dignity and rights, can fulfil that precious birthright.

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<sup>8</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10 <<https://www.refworld.org/docid/4538838c22.html>> accessed 31 August 2023:

**Availability** refers to the quantity of schools sufficient to serve the whole of the learning-age population. It also denotes the existence of sufficient physical resources within schools to allow them to function in a way that facilitates the achievement of the aims of education, including the availability of qualified teachers, buildings including sanitation facilities, teaching materials, etc. **Accessibility** covers the need for schools that are physically accessible by being within "safe physical reach"; economically accessible in relation to affordability, and the avoidance of any form of discrimination which may inhibit a child's access to education. **Acceptability** denotes relevance, cultural appropriateness, and good quality of the form and substance of education, including curricula and teaching methods. **Adaptability** denotes the flexibility of the education system to adapt to the needs of changing societies, as well as to respond to the needs of students within their diverse social settings.

<sup>9</sup> *ibid* [Article 32]

Principal 16, the right to education, states that:

Everyone has the right to education, without discrimination on the basis of, and taking into account, their sexual orientation and gender identity.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure equal access to education, and equal treatment of students, staff and teachers within the education system, without discrimination on the basis of sexual orientation or gender identity.
- b) Ensure that education is directed to the development of each student's personality, talents, and mental and physical abilities to their fullest potential, and responds to the needs of students of all sexual orientations and gender identities.
- c) Ensure that education is directed to the development of respect for human rights, and of respect for each child's parents and family members, cultural identity, language and values, in a spirit of understanding, peace, tolerance and equality, taking into account and respecting diverse sexual orientations and gender identities.
- d) Ensure that education methods, curricula and resources serve to enhance understanding of and respect for, inter alia, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds.
- e) Ensure that laws and policies provide adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment.
- f) Ensure that students subjected to such exclusion or violence are not marginalised or segregated for reasons of protection, and that their best interests are identified and respected in a participatory manner.
- g) Take all necessary legislative, administrative and other measures to ensure that discipline in educational institutions is administered in a manner consistent with human dignity, without discrimination or penalty on the basis of a student's sexual orientation or gender identity, or the expression thereof.
- h) Ensure that everyone has access to opportunities and resources for lifelong learning without discrimination on the basis of sexual orientation or gender identity, including adults who have already suffered such forms of discrimination in the educational system.<sup>10</sup>

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<sup>10</sup> Yogyakarta Principles, 'Principle 16: The right to education' <<https://yogyakartaprinciples.org/principle-16/>> accessed 15 May 2023

Education in Sri Lanka is generally considered to be a success story. The literacy rate has been above 90% for years, if not decades. This is generally attributed to the policy of free, near-universal education implemented in Sri Lanka since the 1940s.

The Constitution of Sri Lanka does not explicitly include the right to education within its chapter on fundamental rights, however, the chapter on Directive Principles of State Policy recognises “the right to universal and equal access to education at all levels” as a principle the state is pledged to establish.<sup>11</sup>

Education Ordinance (No. 31 of 1939) and some of the subsequent amendments predate the Constitution and attempted to regulate the provision of education and establish a welfare system to support disadvantaged pupils and introduce protected grounds against discrimination.<sup>12</sup> A report by the National Education Commission deemed the Education Ordinance as it currently does not “serve any purpose as it is outdated and obsolete.”<sup>13</sup> The Commission went on to make extensive proposals for necessary features of a new education Act.

Specific subsequent legislation has aimed to centralise regulatory power over the education system with the exception of one later Act that seeks to protect tertiary education students.<sup>14</sup> The Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act 1998 does not specifically reference sexual orientation, gender identity or expression, but it does contain language on sexual harassment protections and prohibitions that could easily apply to the experiences of some of the discussion participants:

In that school, everyone discriminated against me. They considered me an abnormal person. It was a bitter time. A couple of older students started making sexual advances, they would always make fun of me and humiliate me. Once they bit my neck. They would slap my butt as they passed me in the corridors. They think we are promiscuous. One student even beat me up. When I complained about it, even the counsellor said I had asked for it by being a girl.

**- Trans woman, Colombo**



<sup>11</sup> The Constitution of the Democratic Socialist Republic of Sri Lanka 1978 Article 27 (2) (h)

<sup>12</sup> iEducation Ordinance (No. 31 of 1939) <[https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=67630&p\\_country=LKA&p\\_count=271](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=67630&p_country=LKA&p_count=271)> accessed 31 August 2023

<sup>13</sup> National Committee for Formulating a New Education Act for General Education, New Education Act for general education in Sri Lanka (2018) <<http://nec.gov.lk/wp-content/uploads/2017/12/Towards-a-New-Education-Act.pdf>> accessed 31 August 2023

<sup>14</sup> National Institute of Education Act (No. 28 of 1985); Colleges of Education Act (No. 30 of 1986); National Education Commission Act (No. 19 of 1991); National Authority on Teacher Education Act (No. 32 of 1997)

## 4.2 Bullying

I had no issues until ALs. But I started having issues when new students joined for ALs. Old friends also started questioning me. It was because I was hanging out with other trans and gay friends. I was not out, but they started labelling me. Some of them started making sexual advances to me. But I resisted them. This became harassment for me. It became an issue. They started bullying me and spreading rumours about me, in the classroom and on social media. They were spreading lies about me having sex with other boys. I could not go to school, so I stopped doing ALs. I had to face everything alone. The school complained to my mother, and she defended me, but they did not understand. My mother knew I really loved learning languages so she wanted me to go to school, but I couldn't continue.

- **Gay man, Galle**



Though literacy rates are high, the education system has many issues that affect LGBT+ students. The rigid understanding of gender in most educational establishments has a negative effect on many students:

He came to our school in Grade 10. There were lots of issues for him because he was effeminate. I was the only one who reached out to be his friend. Even the girls were teasing him; so did the teachers. Boys used to beat him up ... he left school because he couldn't take it. I heard he was ordained as a monk.

- **Queer man, Colombo**



Schools perpetuate this gender rigidity through uniforms and other appearance-related codes, including regulations on hair length, grooming of facial hair, types and sizes of jewellery allowed or required in school, colour of shoes, length of shorts, slacks or frocks and so on:

I went to a girls' school. I played netball and had to wear a skirt. I used to hate the skirt. Also, I was a prefect and had to wear a saree. It was very difficult. I was walking weird. Teachers also teased me. It was uncomfortable. I was forced to be girlish; they made it an issue about discipline. They called me names. They thought I was a lesbian. I took it as a joke. I didn't stress about it. Every day I had issues in school. Once, a teacher asked my father to come to school and complained to him about me. She told him to check whether I had the right genitals. My father scolded her, he defended me. The only dress I ever wore was the school

- *Cont.*



- *Cont.* uniform. Even when I was the badminton captain, I refused to wear the skirt and wore shorts instead, which was an issue.

- ***Trans man, Galle***



Students whose gender expression infringes these dress codes often face degrading treatment by peers, faculty and their parents:

I did athletics. Some of the older girls had crushes on me and pursued me. The teacher got to know and warned my mother. She scolded me about my short hair ... I started dating a girl in school ... and everyone got to know; it was a big issue. Everyone was trying to force me to grow my hair. Even my mother took me to a temple and forced me to wear a skirt.

- ***Trans man, Colombo***



Gender stereotyping extends beyond the use of dress codes, further infringing the right to expression by expecting students to conform to cultural interpretations of masculine and feminine.

Faculty, again out of prejudice or ignorance, often single out LGBT+ students for discrimination. Faculty have informed parents of their child's 'non-normative' behaviour, potentially violating the students' rights to privacy and possibly aggravating already difficult home situations, and have allowed bullying to continue unchecked:

We attended a mixed school and always gravitated towards the company of the male students. We were constantly criticised for that and for having our hair too short. The teachers warned our parents about us being lesbians and having relationships with other girls in the school.

- ***Trans men, Galle***

I walk with a bit of a sway in my hip. People in school called me narilatha [insult associated with the feminine] since Grade 7 or 8. I used to cry and threaten to tell my mother. I complained to the teachers, but they did nothing.

- ***Gay man, Colombo***



Faculty who discriminate against LGBT+ students or do nothing to prevent it are often found to enable similar behaviour from fellow students. All participants in the group discussions who had stories of being verbally abused or punished by teachers also had stories of being bullied and harassed by their peers. While the most common form of bullying was name-calling, the bullying also went as far as physical assault and, in some cases, sexual violence:

My little brother and I used to have to walk about a mile to and from school every day. I wasn't only bullied in school. When we were walking home after school, boys would come up behind us on push bikes and throw stones at me, calling me the same names they called me when I was in school. My little brother understood it was because I was different. I was so embarrassed because my brother also saw what was happening to me.

**- Trans woman from the Northern Province**

Whenever there was a free period without a teacher, my classmates would come to me with aggressive sexual advances, which I resisted. When I could take it no longer, I went to a male teacher to complain about the other students' behaviour. However, when the teacher heard my complaint, he too made sexual advances. I felt hopeless and gave up trying to seek safety at school. I kept silent.

**- Non-binary person, Batticaloa**

Even in Grade 5, kids used to call me names. I did not care much, because I did not understand. I passed the scholarship exam and went to a different school. A lot of my friends were girls. Some boys also supported me. I passed OLs [Ordinary Level Examinations] and went to a different school. And then I got sick of school. Around that time, me and some of my friends started skipping school to go to a place where a lot of trans people come. It's this place where you can buy a ticket for a small amount of money, and once you go upstairs, there are men watching porn on a TV in a room. I took a liking to it. I wanted to live like that. Before OLs, I started working at Prima [a manufacturing company]. I still did OLs, though, and I even passed. After that, I only went to school for about three months. At the new school I joined for ALs, they teased me really badly and isolated me. I got really sick of it, so I stopped schooling. I started going to St. Anthony's instead. Even my parents are not educated. They did not realise the value of education. Nobody cared when I stopped schooling.

**- Trans woman, Colombo**



Some of the stories told during the discussions highlighted that when students were bullied, they were then punished further by people in authority for being different:

I had a friend in the hostel, and we both loved to secretly dress up in women's clothes. We slowly collected money and sneaked off to the street market on weekends to buy frocks. We would dress up in them and play. We were about 12 or 13 years old around this time. We didn't have a proper place to hide the clothes, so we stuffed them deep inside the cupboard we shared with some other students. But one day the other boys found our clothes, and there were a lot of issues after that. They chased us everywhere and made fun of us. The principal was also told, and we were punished harshly.

**- Trans woman, Colombo**



### 4.3 Sexual Violence

Participants also described their experiences as victims and survivors of sexual violence as children and how this affected their education:

I was 14 years old. I was attending school in the night for a school performance. All the other students had left. The teacher who had hung back had asked to have sex with me. Of course, I refused. Things got violent then. I was told not to say anything. I lost interest in performing at school after that.

**- Gay man, Trincomalee**

I was repeatedly sexually abused by the older boys, teachers, and priests at the school. My first sexual experience with an older boy—at first it was forceful, but afterwards it was consensual. The abuse from priests was stressful for me. I left school. They would ask me to come to their room. There were repercussions if I refused. There was no one to tell. We also didn't have an understanding about these things. We were scared to tell the principal or anyone else.

**- Trans woman, Colombo**

The issues in school started in Grade 8. I had to wear a saree for a drama performance. In Grade 9, we took part in a fashion show dressed as women. By Grade 10, everyone was bullying me, they started calling me names. Even the teacher was calling me names. It was a mixed school. People were teasing me. By the time I was doing my ALs, I was really sick of it. I did OLs well. During ALs, I was sexually abused by an old man.

**-Cont.**

-Cont. That was my first sexual experience. It was traumatic. I was suicidal. I went to a counsellor, but, in school, people started saying I had abused someone, so, I had to leave school. I never did my ALs.

- **Trans woman, Colombo**



The Policy framework and national plan of action to address sexual and gender-based violence (SGBV) in Sri Lanka: 2016–2020 was adopted by the Sri Lankan government in May 2016.<sup>15</sup> As regards protecting children from SGBV in the context of schools, the only material recommendation is to “Develop and institutionalize [sic] a code of conduct for staff of educational establishments.” However, while according to the framework the timeline for this activity was 2016–18, no data on its progress were available in the 2021 final review of the action plan’s implementation.<sup>16</sup> As a whole, the plan is silent on the existence of LGBT+ students and appears to focus on safeguarding women and girls.

#### 4.4 Lack of Comprehensive Human Rights or Sex Education

The lack of comprehensive human rights and/or sex education in Sri Lanka affects everyone. For students experiencing same-sex attractions or trying to understand their gender identity, the absence of any guidance is acutely felt:

The government published a supplementary book on sex education, but there was only one copy of it in my school, locked in a glass cabinet in the school library as if it were an artefact in a museum. If students requested to read the book, the librarian would chase them away, accusing them of being too interested in sex.

- **Queer woman, Colombo**



<sup>15</sup> Ministry of Women & Child Affairs, *Policy framework and national plan of action to address SGBV in Sri Lanka 2016-2020* (2016) <<http://www.childwomenmin.gov.lk/storage/app/media/sgbv-compressed.pdf>> accessed 31 August 2023

<sup>16</sup> Ministry of Women & Child Affairs and Social Development and United Nations Development Programme, *National plan of action to address SGBV in Sri Lanka 2016-2020: What have we achieved & what next?* (2021) <<https://www.undp.org/sites/g/files/zskgke326/files/2022-10/SGBV%20National%20Action%20Plan%202016-2020%20Review%20Report%20Final.pdf>> accessed 31 August 2023

Another participant recalled:

The chapter [sex education] was skipped by the schoolteacher. We were provided with a seminar on sex education by the Ministry of Health, which included issues related to same-sex relations. It was okay. Better than nothing. Talking to friends, I think I was lucky to get that.

I was under a lot of stress in my adolescent years, trying to understand why I was feeling attractions to other boys in my school. I asked my friends, but no one could explain anything to me in any satisfactory way. When I eventually started being sexually active in the latter years of my school days, it was a friend of mine who brought me a condom to use.

**- Queer man, Colombo**

I thought my crushes on female classmates meant I was mentally ill. I was plagued by questions about my sexuality and gender identity, but I had no help from my school in making sense of any of it.

**- Trans man, Galle**

I asked my teacher in class whether a woman could be a man. My teacher laughed at me.

**- Trans man, Colombo**



Article 19 of the Universal Declaration of Human Rights (1948) states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>17</sup>

In the Constitution of Sri Lanka, Article 14A (1) establishes the right of access to information with the caveat, under 14A (2) that: “No restrictions shall be placed on the right declared and recognized by this article, other than such restrictions prescribed by law... for the protection of health or morals...”<sup>18</sup>

Restrictions imposed on the right to access information—whether due to a lack of knowledge on the part of those charged with imparting the information, prejudice or cultural mores—curtails LGBT+ students’ right to personal development under Article 26 of the UDHR:

<sup>17</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)

<sup>18</sup> Constitution (n 11)

I was very uncomfortable when I hit puberty and my breasts started to grow. I was embarrassed to wear a bra or even a half vest. I didn't really know what was going on.

**- Trans man, Galle**

I used to get so inexplicably angry during my periods as a teenager that I could not control myself. I started to skip school on those days. I wished he had received better information about surgery. It was not what I expected after the surgery was performed.

**- Trans man, Colombo**

I used to inject myself with stolen testosterone because I was afraid to seek therapy formally. I really could have benefitted from better education to help me understand who I was.

**- Trans man, Colombo**

I really didn't understand what was going on, I didn't understand why I was getting bullied. I didn't understand why I was not masculine like the other boys.

**- Trans woman, Colombo**



I have been to three schools. Ordinary Levels was my favourite time. ALs was terrible. School was both a wonderful and terrible time. I fell in love with a boy for the first time when I was about 16, 17 years old. My best work was during OLs, but after that I got sick of school. Once I started realising my sexual orientation, I was under a lot of stress. I did not have anyone to ask the questions I had. When I asked my friends, they also had no idea.

**- Gay man, Kandy**



The National Strategic Plan on Adolescent and Youth Health incorporates the principle of comprehensive sexuality and reproductive health education throughout as a key component of its strategy but does not elaborate on the substance of such education.<sup>19</sup> The plan is silent on the existence of LGBT+ youth and adolescents. Consequently, there is no mention of the importance of sexuality and reproductive health education in their well-being.

<sup>19</sup> Ministry of Health, *National strategic plan on adolescent and youth health 2018–2025* (n.d.) <<http://yowunpiyasa.lk/images/Guidelines/sp/SP.pdf>> accessed 31 August 2023

## 4.5 Conclusions and Recommendations

In ratifying the ICESCR, Sri Lanka agrees “that education shall be directed to the full development of the human personality and the sense of its dignity”. Inherent in that sense of dignity, according to the Yogyakarta Principles, is an understanding of, coming to terms with, and acceptance of sexual orientation and gender identity. The findings of this report would suggest that Sri Lankan LGBT+ students are no different, and that a lack of access to information while at school affects their well-being and thus their interest in staying in education.

This report highlights how reductive cultural norms and binaries, whether in terms of sexual orientation or gender that are perpetuated in schools, reduce LGBT+ students’ willingness and/or ability to remain in school. It also highlights how behaviours that don’t fit within the strict and reductionist definitions of gender stereotypes often result in ridicule, bullying and, in some cases, punishment by faculty with little to no recourse for students but to change schools or ultimately leave education altogether.

The legislative framework does little to guarantee the rights of LGBT+ students, and actions taken by the schools and educational establishments highlighted in this report are not based in law. There is nothing in the Constitution of Sri Lanka or any specific law that instructs schools to insist on gendered binaries in terms of dress, appearance, mannerisms and, in some cases, subjects studied. If insisting on gendered uniforms, appearance and behaviours can be understood as infringing on the fundamental right to freedom of expression, then, under the Constitution, no law may permit such infringement.

As with the right to adequate housing, the right to education cannot be addressed in isolation. Pursuing dignity through education requires the state to comply with its international human rights obligations. Fulfilling the right to access to information addressed within the right to freedom of expression, particularly through improving national curricula on human rights and sex education, would, the participants believe, support LGBT+ students understanding of themselves and their acceptance by their peers.

### 4.5.1 Recommendations

#### 1. Gender neutrality in schools

- I) The state should adopt a policy of introducing gender neutrality into all government, assisted, and unaided schools in Sri Lanka.
- II) All schools should be coeducational.
- III) The state should establish a body of appropriate experts to study the approaches and implications of introducing gender neutrality policies in schools and to develop a roadmap for improving those policies.
- IV) The expert body should collaborate with existing educational institutions, such as the National Institute of Education and the National Education Commission, in developing the roadmap.
- V) The roadmap should include a communications strategy that raises awareness among Sri Lankans of the need for gender neutrality, the harms of gender stereotypes/gender-specific school practices, and the broader benefits of gender-neutral learning environments.
- VI) As part of the gender neutrality policy, the Ministry of Education should stipulate school uniforms that prioritise age-appropriate dress, comfort and functionality.
- VII) All other dress code regulations should apply to all students equally, irrespective of their sex assigned at birth.

#### 2. Guidance, counselling, and mental health support in schools

- I) All schools should implement programmes to provide students with one-on-one guidance, counselling, and mental health support services.
- II) All students, in line with developing capacities, should be required to periodically check in with the school mental health practitioner.
- III) Schools should implement specific programmes, including communications strategies, to normalise and destigmatise students (especially adolescents) seeking out mental health support.
- IV) Qualified mental health practitioners should be trained and deployed for this purpose. They should receive training in guiding and treating students of all sexual orientations and gender identities.
- V) Codes of practice and education regulations should be adopted to guarantee practitioner–student confidentiality in all circumstances.



- VI) Any situations requiring a referral to a third party, including school authorities, a parent of a student, an external specialist, the police, or others should be carefully regulated and predicated on the consent and/or the best interests of the child.
- VII) The state should consult relevant expertise in designing mental health programmes to be implemented in schools.
- VIII) Teachers, especially sectional heads and class teachers, should be trained to identify students who do not conform to gender norms, establish close relationships with them, and monitor their safety and well-being within the school.
- IX) At no point should a student be named or labelled a gender non-conforming student unless they openly self-identify as such.
- X) Schools should closely monitor any conduct or comments by teachers and students that could undermine the mental health programmes implemented in schools.

### **3. Comprehensive sex education**

- I) Age-appropriate, comprehensive, and inclusive sexual and reproductive health education (CSE), based on scientific evidence and human rights standards and developed with adolescents, should be part of the mandatory school curriculum.
- II) CSE should include relationship education, safe dating, and safe sex practices.
- III) CSE should also include education in understanding and identifying all forms of sexual abuse and predatory behaviour. Children should be routinely encouraged to reach out to a trusted adult, including the school counsellor, if they are ever subjected to sexual abuse.
- IV) Schools should be prepared, including by instituting the necessary procedures and identifying a focal point for student outreach on sexual abuse, to respond to any information on students experiencing sexual abuse, whether perpetrated at or outside school, and whether perpetrated by someone attached to the school or otherwise. Confidentiality should be guaranteed.
- V) Students should be educated on consent, harmful masculinities, and treating all people with respect and dignity, irrespective of their sexual orientation or gender identity.

- VI) CSE should include education on diverse sexual orientations and gender identities.
- VII) CSE should go beyond a textbook subject and be incorporated into routine school life.
- VIII) All teachers should be trained in the principles of CSE even if they are not required to teach it as a subject in classrooms.
- IX) Teachers should be educated on the impact of their attitudes towards sex on the children they speak to, especially in classroom settings. Teachers should be trained to be aware of the possibility of children in their classrooms going through mental health issues about their body, gender identity and/or sexuality.
- X) All teachers should be trained to identify changes in students' behaviour that may indicate recent or ongoing cases of sexual abuse. Teachers should be trained in responding to such cases in a manner that prioritises the best interests of the child or children in question, including, where applicable, student perpetrators.
- XI) Education administrators should routinely monitor the effectiveness of CSE within each school, especially through student feedback.
- XII) Measures taken to prevent sexual abuse should be gender-neutral, where all children receive equal attention and information, regardless of their gender identity.

#### **4. Dropping out of school and school absenteeism**

- I) Mental health support should be an essential element of the response to school absenteeism, including dropping out. Schools should positively establish that absentee students are not facing any challenges related to their mental health or well-being when addressing the causes for their absence or dropping out.
- II) Students of all ages, regardless of the regulatory age bracket for compulsory education, should receive support and encouragement to return to school, even if they cannot be compelled to attend school after a certain age.
- III) Where causes for absenteeism are identified as being related to hindrances to a student's well-being in school, the school should be prepared to effect necessary reforms to address such hindrances, both immediately and progressively, and to inform the relevant student and their parents, with a view to encouraging that student to attend school.

- IV) Schools should be obliged to inform regional/national education authorities on the need for changes in policies at higher levels, as well as any changes made at the level of the school, or those that need to be made at the school level, with a view to establishing a feedback loop between measures taken to counter school absenteeism and broader education policy.
- V) Regional/national education authorities should collate information received from schools on the issue of school absenteeism and account for them in their periodic policy reviews.
- VI) The relevant education institutions—National Institute of Education, National Education Commission, and others—should be consulted and incorporated into all processes that address school absenteeism.

## 05 EMPLOYMENT

I have two degrees, but that didn't matter when I was hoping for a job in the public sector. As soon as I arrived for the interview, I was asked to sit apart from the other candidates. They never called me in for an interview. Eventually, I left, and I will not be applying for a government job again. I am sure I was treated like that because I am trans.

- **Trans woman, Colombo**



### 5.1 Legal framework on the Right to Work

Article 23 of the Universal Declaration of Human Rights states, "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."<sup>20</sup>

The Convention on Economic, Social and Cultural Rights (ICESR, 1966) which Sri Lanka ratified in 1980, states, under Article 7:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

<sup>20</sup> UDHR (n 17)

General Comment No. 23 from the Committee on Economic, Social and Cultural Rights, in defining Article 7 of the ICESCR, goes on to clearly lay out a state party's obligations under the ICESCR to combat any form of discrimination-based harassment:

...the Committee reiterates that equality applies to all workers without distinction based on race, ethnicity, nationality, migration or health status, disability, age, sexual orientation, gender identity or any other ground.<sup>21</sup>

### **Freedom from harassment, including sexual harassment.**

All workers should be free from physical and mental harassment, including sexual harassment. Legislation, such as anti-discrimination laws, the penal code and labour legislation, should define harassment broadly, with explicit reference to sexual and other forms of harassment, such as on the basis of sex, disability, race, **sexual orientation, gender identity and intersex status**. A specific definition of sexual harassment in the workplace is appropriate, and legislation should criminalize and punish sexual harassment as appropriate...<sup>22</sup> [**emphasis** added]

In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to sexual orientation and gender identity. The result was the Yogyakarta Principles, a universal guide to human rights which affirms binding international legal standards with which all states parties must comply. They promise a different future where all people, born free and equal in dignity and rights, can fulfil that precious birthright.

Principle 12 of the Yogyakarta Principles sets out the right to work.<sup>23</sup> Everyone has the right to decent and productive work, to just and favourable conditions of work, and to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity. States shall:

- (a) Take all necessary legislative, administrative, and other measures to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration;

<sup>21</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, 7 April 2016, E/C.12/GC/23 <<https://www.refworld.org/docid/5550a0b14.html>> accessed 31 August 2023, para 11

<sup>22</sup> *ibid*

<sup>23</sup> Yogyakarta Principles, 'Principle 12: The right to work' <<https://yogyakartaprinciples.org/principle-12/>> accessed 15 May 2023

- (b) Eliminate any discrimination on the basis of sexual orientation or gender identity to ensure equal employment and advancement opportunities in all areas of public service, including all levels of government service and employment in public functions, including serving in the police and military, and provide appropriate training and awareness-raising programmes to counter discriminatory attitudes.

The Constitution of Sri Lanka recognises as a fundamental right the freedom to engage by himself (note gendered pronoun) or in association with others in any lawful occupation, profession, trade, business or enterprise.<sup>24</sup>

The section on Directive Principles of State Policy recognises several principles related to employment and economic justice. Significant among them is the recognition of the principle of eliminating “economic and social privilege and disparity and the exploitation of man by man or by the State.”<sup>25</sup>

Sri Lanka does not have any laws preventing or remedying discriminatory recruitment practices within the private sector. Under Article 12(2) of the Constitution, a FR violation can be instituted against public sector employers, where a recruitment was discriminatory as a result of an executive or administrative action. However, despite existing laws, such discriminatory practices in respect of a person’s gender/sex are considered to be endemic within the labour market.<sup>26</sup>

The most recent National Action Plan for the Protection and Promotion of Human Rights (2017–21) anticipated the enactment of legislation on occupational safety, health and welfare at work.<sup>27</sup> The aim of the law would be to address the shortcomings of the Factories Ordinance (No. 45 of 1942).

Sexual harassment is an offence under Sri Lankan law. Section 345 of the Penal Code, updated in 1995, states:

<sup>24</sup> Constitution (n 11) Article 14 (1) (g)

<sup>25</sup> *ibid* Article 27 (7)

<sup>26</sup> UN Women, *Gender Disparities and Labour Market Challenges: The Demand for Women Workers in Sri Lanka* (2022) <<https://asiapacific.unwomen.org/en/digital-library/publications/2022/03/the-demand-for-women-workers-in-sri-lanka>> accessed 31 August 2023

<sup>27</sup> Government of Sri Lanka, *National Action Plan for the Protection and Promotion of Human Rights* (2017) <[https://www.ohchr.org/sites/default/files/Documents/Issues/NHRA/NPASriLanka2011\\_2016.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/NHRA/NPASriLanka2011_2016.pdf)> accessed 31 August 2023

... whoever, by assault or use of criminal force, sexually harasses another person, or by the use of words or actions, causes sexual annoyance or harassment to such other person commits the offence of sexual harassment and shall on conviction be punished with imprisonment of either description for a term which may extend to five years or with fine or with both and may also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person.

Explanation:

1. Unwelcome sexual advances by words or action used by a person in authority, to a working place or any other place, shall constitute the offence of sexual harassment.
2. For the purposes of this section an assault may include any act that does not amount to rape under section 363 ...<sup>28</sup>

The predominant forms of social insurance provided in Sri Lanka are the Employees Provident Fund (a retirement scheme for the private and semi-government sector employees) and Employees Trust Fund (for employees in State Corporations, Statutory Boards and the Private Sector) contributions. These apply in situations of employment in the formal sector. Employment in Sri Lanka is overwhelmingly within the informal sector, accounting for more than 70% of the labour force. As a consequence, a large majority of the labour force is excluded from accessing social insurance.

The Termination of Employment of Workmen (Special Provisions) Act (No. 45 of 1971) requires an employer to inform an employee of the reasons for their dismissal in writing. An unfair dismissal can be challenged after the fact before a Labour Tribunal under the Industrial Disputes Act (No. 43 of 1950). The jurisdiction of the Labour Tribunal is broad enough to encompass discriminatory dismissals, including on grounds of sexual orientation and/or gender identity. However, the burden of proof would seem to fall on the dismissed employee. Remedies, should the case progress that far, could include reinstatement with backpay as well as compensation in lieu of reinstatement.

Participants in the research included university lecturers, bankers, trained nurses, coaches of various sports, and counsellors. Many also worked in various LGBT+ rights organisations. Most of the participants, however, worked in low-income, relatively unskilled occupations. The research suggests a correlation with the enjoyment of the right to education, a supported home life and income earned:

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<sup>28</sup> Penal Code Ordinance (No. 2 of 1883), s 345

After graduating from school, I moved to India to study classical dance, and that's where I started transitioning. I only returned to Sri Lanka very recently, but since then I have been living in rented housing... the current landlord knows I am trans. I've never had any problems with rented housing. Maybe things are different for me as I grew up in private care. I had a five-star childhood, graduated from university, and now work as both a lecturer and in an LGBT organisation.

**- Trans woman, Colombo**



Cultural stereotypes in Sri Lanka are rigid. Definitions of what it is to be masculine and what it is to be feminine are a key part of that rigidity. Participants highlighted how it was easier for some to “pass” than for others, and thus to avoid problems at work or at home:

After I got married, my husband shouldered the burden of finding a home to rent, and work. I didn't get too involved. We are both transgender, but people generally have no idea we are trans. Where we currently live, we don't have any major issues, the landlady treats me like her own daughter. We rent a portion of her house, so we live on the same land. She never comes to say or ask anything if anybody visits; we have total freedom with visitors. We usually need some extra time to pay the rent, but she never says anything about any delays. If we are short, then her husband often offers my husband work. He's a builder.

**- Trans woman, Colombo**



Participants also discussed the difficulties they face in finding work:

I kept being rejected at many places without even an interview. I would arrive for one and the employer would inform me that someone else had already been hired. I think they reject me because I look effeminate.

**- Gay man, Trincomalee**

I hide my gender identity now. My documents don't say I am male, so I don't tell them I am trans. I had a bad experience in my previous job, so I hide it for the interview, and when I was lucky and got the job, I didn't tell them about me.

**- Trans man, Galle**





Other trans men found no problem with their documents not corresponding with their trans identities:

When, I faced the interview for my current job as an auditor I had to disclose I was trans as all my school certificates were in my former name. They not only hired me but also welcomed me as their first trans employee in Sri Lanka. It's an international company...

**- Trans man, Colombo**



Rigid stereotypes are reinforced by uniforms and dress codes at work in a similar way to that of educational establishments:

My commanding officer when I was playing netball for the Air Force didn't like me. I don't think she liked trans people generally. Whenever we were off the field, she would insist on feminine clothes and jewellery. If you didn't you would get punished. Eventually I left the Air Force as it became too much.

**- Trans man, Galle**

I worked in a local supermarket chain. Initially I was allowed to work in any clothes. My colleagues resented me being excused from the company uniform, they complained against me, and I never got promoted.

**- Trans man, Galle**

I used to work in a pharmacy as an assistant. The owner insisted that all girls working in the pharmacy wear skirts. Once I began to transition, I could not bear this rule any longer, so I resigned.

**- Trans man, Colombo**

I was working at an NGO for sex workers' welfare. Eight years. My job required me to work with government officials, and the NGO had a strict dress code. I wasn't allowed to wear feminine clothes, I had to wear men's formal attire. Eventually I had to leave as I couldn't put up with it.

**- Trans woman, Galle**



LGBT+ employees also felt that they had been passed over for promotions because of their sexual orientation, gender identity and/or gender expression:

I had all the necessary qualifications in addition to being popular among my students. My colleagues were opposed to me being made permanent, so I continue to work as a visiting lecturer. I would make a complaint if I had a way of proving that I was being denied a permanent position due to my gender identity.

**- Trans woman, Colombo**



Needs of LGBT+ employees, as with any other employee, change over time. Retention of LGBT+ staff is seemingly poor with a high turnover of staff. Even where the employer has policies in place to support LGBT+ staff:

I began transitioning after I joined a manufacturing company as a factory worker. I informed the human resources division in the company about my decision to transition and they were supportive. My teammates weren't so supportive. Their attitudes to me changed. Even my team leader started insulting me. I told HR. They asked my teammates to stop harassing me. I wasn't allowed to use the women's bathroom, even though I had begun to transition. I once got groped in the men's bathroom and that didn't change their minds. I resigned in the end. After I had transitioned, I went back to the same company but a different factory. It was fine until people found out I was trans, and the harassment started again. I left that job, too. Afterwards I found out that the company didn't like employing trans people after they transition as they can't guarantee their safety at work due to public hostility towards us.

**- Trans woman, Colombo**



## 5.2 Sexual Harrassment and Abuse

Harassment, bullying and intimidation are sadly all too common for LGBT+ Sri Lankans at work:

I work in a hardware store. I am out. People at work often ask personal questions about my sex life. They don't ask others the same questions. I don't know why they feel they can ask me. Sometimes it gets really annoying and then I just wish I could work somewhere else.

**- Gay man, Colombo**

*-Cont.*

In my office they are constantly offering to find me a wife. They don't know I'm gay because I'm scared they will fire me if they find out. I can't ignore them or tell them. It's really uncomfortable and sometimes it can affect my work.

**- Gay man, Galle**



For many, however, the harassment and bullying goes beyond intrusive and uncomfortable questions. For many, it can lead to physical abuse:

I had to bathe with the men, in the male bathrooms. They come to the washroom asking for sex. But I did not have sex with any of them ... Men paid a lot of attention to me; it was a risk to me. I was 16, so I did not encourage any of that. I did not mix with them too much because I was new.

**- Trans woman, Colombo**

I first went to train as a steward at a hotel. I wanted to work in tourism. But it was very difficult. There were so many sexual advances from other staff members, so I stopped after 12 days. There is no point in complaining. The tips were good. The job was good. But it was so difficult.

**- Trans woman, Colombo**



The same trans woman went on to say:

I got another job in a factory in a leading international clothing company. It was fine until I started to transition, and I got physically assaulted in the men's bathroom. The company were good to me and took action against the man. Rumours started that I was having an affair with the manager, so in the end I had to leave.

**- Trans woman, Colombo**

Another trans woman who participated in the Colombo discussion said:

I was young, and it was my first job. I really didn't know what to expect. When the restaurant would close, the men I worked with would take me to the carpark and abuse me. I tried to resist at first but gave up and then I left the job.

**- Trans woman, Colombo**



## 5.3 Sex Work

Sex work is not explicitly criminalised under Sri Lankan law. However, the Vagrants' Ordinance and Brothels Ordinance are used to criminalise sex work, including by the arbitrary and unlawful arrest of sex workers.<sup>29</sup> In addition to these laws of general applicability, same-sex sex workers (as well as trans sex workers) are vulnerable to heavier penalties stipulated for the offence of gross indecency under the Penal Code.<sup>30</sup> A trans woman at the Colombo discussion gave the following account:

I was abandoned by family at a very young age. I dropped out of school around the age of 15. I danced at Cleopatra for three years. This is where I discovered sex work. I was around 22 years old then. I worked at Thomas at Liberty Plaza. I did not think I was doing anything wrong. Prices change. I was doing it happily. Then I felt like I was tired of clubs and sex work. Then I started at another club. I did not want to accept that that job was sex work. I now accept that it was sex work.

Then I started working at a salon, but my friend was not paying me. I stopped and advertised sex work online and started working. I was a bit hesitant; I know about the diseases. It is not that I like doing it. But I needed the money. Then I found another salon job, but I was too involved with sex work. I only work twice a week.

Recently, someone claiming to be from CID [Criminal Investigation Department] came to interrogate me about the ad. Then he wanted to have sex with me. But I refused to have sex without money. He tried to intimidate me, but I was not worried. I need to meet my expenses. I charge 8,000 rupees per session.

I also work at a salon on a freelance basis. But it is not permanent. I don't want to do sex work forever. I will find a salon to work at. I don't like love and relationships. I want to do sex work for money. I don't trust anyone. I take money before we have sex. Once a man did not pay me after having sex, so now I always take money before having sex. I only go for my own deals. I don't take anyone else.

I had feelings about one boy, but they finished with one job. It was due to the hormones I was taking. When I take the money, I have to give them what they want. Even if I don't like it, I have to stay until they finish. There are all kinds of people who come as clients. Some are good, some not so much.

**- Trans woman, Colombo**



<sup>29</sup> National STD/AIDS Control Program, *Laws concerning commercial sex and HIV/AIDS prevention* (n.d.). < [https://www.aidscontrol.gov.lk/images/pdfs/books/Laws\\_Concerning\\_en.pdf](https://www.aidscontrol.gov.lk/images/pdfs/books/Laws_Concerning_en.pdf) > accessed 31 August 2023

<sup>30</sup> Penal Code (n 23) s 365A

## 5.4 Conclusions and Recommendations

In ratifying the ICESCR, Sri Lanka agrees, under Article 7, not only to provide for the right to work in terms of progressive creation of work but also to ensure that conditions in the workplace should ensure rights to dignity and be free from any form of discrimination. The Yogyakarta Principles reiterate that a state should respect, protect and fulfil in a progressive manner the rights in Article 7 of the ICESCR without discrimination based on sexual orientation and/or gender identity. The findings in this report would suggest that Sri Lankan LGBT+ employees are no different in their need for protections.

This report highlights how reductive cultural norms and binaries, whether in terms of sexual orientation or gender that are perpetuated in the workplace, reduce LGBT+ employees' willingness and/or ability to remain at work. It also highlights how behaviours that don't fit within strict and reductionist gender stereotypes often result in ridicule, harassment and, in some cases, sexual violence by colleagues with little to no recourse for the employee but to seek other employment.

The legislative framework does little to guarantee the rights of LGBT+ employees. There is nothing in the Constitution of Sri Lanka or any specific law that instructs employers to insist on gendered binaries in terms of dress, appearance, mannerisms and, in some cases, types of employment. If insisting on gendered uniforms, appearance and behaviours can be understood as infringing on the fundamental right to freedom of expression, then, under the Constitution, no law may permit such infringement.

As with the rights to adequate housing and to education, the right to work cannot be addressed in isolation. Pursuing individual dignity and overall economic development requires the state to comply with its international human rights obligations. By fulfilling rights such as equality, non-discrimination, and education, among others, conditions in the workplace would support the right to work and to choose an occupation, irrespective of how any person identifies.

### 5.4.1 Recommendations

#### 1. Eliminating discrimination in the workplace

- I) The state should enact a law to prevent and provide remedies for discrimination in recruitment practices, including the prohibition of discrimination on the basis of sexual orientation, gender identity, gender expression, and sex characteristics.
- II) The same law should address discriminatory employment practices against employees, including on the grounds of sexual orientation, gender identity, gender expression, and sex characteristics.
- III) The state should review evidentiary rules that make it difficult for complainants to prove their claims.
- IV) Antidiscrimination laws should include provisions for wage/pay transparency. Access to company information by employees in relation to discriminatory practices should be guaranteed. Where practical, employees should be able to access such information anonymously. Companies should be compelled to proactively disclose relevant information (such as information warranted by pay transparency) on relevant platforms, such as noticeboards, human resource manuals for employees, intranet, the company's public website, and others.
- V) Antidiscrimination laws should apply to the formal and informal sector. The state should study the differentiated measures needed to eliminate discrimination in both settings and transform that knowledge into laws and regulations. The Department of Labour, or a body of experts specially constituted for that purpose, should study this area over a specific timeframe, and periodically update the public (including the trade union sector) on their findings so as to stimulate proposals for legislative reform from the public.

#### 2. Occupational safety and health

- I) The state should enforce existing legislation on occupational safety, health and welfare at work.
- II) As part of this process, the state should review all laws that establish gender-based distinctions in workplaces, whether formal or informal, with a view to establishing their impact on LGBT+ staff.
- III) Where gender-neutral alternatives are plausible, the state should always opt

for such alternatives.

- IV) Workplaces, especially factories, should include single-occupant sanitation facilities in addition to multiple-occupant facilities necessitated by the need for added privacy. Where possible, trans and gender non-conforming employees, as well as employees with disability, should enjoy prioritised access to such facilities.
- V) As far as possible, uniforms in the workplace should be gender neutral. Where this is impractical for industry-specific reasons, employees should be able to opt for a uniform of their choice, whether it is gender neutral or not. Uniforms should not be assigned by virtue of formal gender categories (in other words, the gender specified in a birth certificate); rather, they should be assigned based on the choice of the employee.

### **3. Health benefits**

- I) Where employers provide health coverage for employees, the state should prohibit the explicit exclusion of gender affirmation therapies from such coverage, provided that the cost of such therapies is on par with other healthcare services incurring similar costs.
- II) The exclusion of gender affirmation therapies by operation of various categorisations (such as 'non-essential' healthcare services, or 'pre-existing conditions') should be prohibited.
- III) The state should recognise, celebrate, and positively reinforce companies that voluntarily provide health coverage for gender affirmation therapies.

### **4. Sexual harassment**

- I) The definition of sexual harassment under Sri Lankan penal law should be broadened to include activities that might cause harassment related to a person's actual or perceived sexual orientation, gender identity, and marital status.
- II) Name-calling, labelling, and other forms of verbal abuse of a specifically gendered nature should also constitute sexual harassment.
- III) The state should lead the development of a Code of Conduct to prevent and address sexual harassment in workplaces, the adoption of which should

be mandatory for all employers. The development of the code should pay particular regard to the strategies necessary to prevent sexual harassment in settings of informal employment in parity with formal settings.

IV) The state should recognise, celebrate, and positively reinforce companies that actively take steps to prevent and address sexual harassment within their organisations.

## 5. Sex work

- I) The Vagrants' Ordinance should be repealed.
- II) The Brothels Ordinance should be amended to explicitly protect individuals directly engaged in sex work (as opposed to pimps, madams, brokers, and others) from any criminal procedures, including all forms of pretrial detention.
- III) Sex workers should have access to necessary healthcare services, including sexual and mental health services, by virtue of being a sex worker. Relevant health institutions should be given the capacity to provide such services without stigma or discrimination.
- IV) All law enforcement officials who illegally arrest, abuse, or extort from sex workers should be dealt with severely, including through administrative and criminal procedures.
- V) The National Human Rights Commission should seek to provide human rights education programmes to sex workers and support claims of police abuse.
- VI) Any state social welfare programme needs to be accessible to informal sector workers, including sex workers.

I was hired as a 'room boy' in a guesthouse. My employer knew I was trans and was very understanding, taking steps to ensure I was safe at work.

- **Trans woman, Jaffna**







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