

**CONTEMPORARY ADVOCACY BY  
AND RESEARCH ON THE  
LGBTQI+ COMMUNITY OF  
SRI LANKA**



**Women and Media Collective**  
Established 1964



Norwegian Embassy  
*Colombo*

# Contemporary Advocacy by and Research on the LGBTQI+ community of Sri Lanka

May 2021

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Supported by: Royal Norwegian Embassy



Norwegian Embassy  
*Colombo*

Published by:



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## **List of Abbreviations**

CEDAW	Committee on the Elimination of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Committee on the Rights of the Child
CSO	Civil Society Organisation
GRC	Gender Recognition Certificate
HIV/AIDS	Human Immunodeficiency Viruses/Acquired Immunodeficiency Syndrome
HRComm	United Nations Human Rights Committee
HRCSL	Human Rights Commission of Sri Lanka
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Cultural, Economic and Social Rights
LGBTQI+	Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex and Other
MSM	Men who have Sex with Men
NGO	Non-Governmental Organisation
NHRAP	National Action Plan for the Protection and Promotion of Human Rights
NSACP	National STD/AIDS Control Programme
PLHIV	People Living with HIV/AIDS
SOGI	Sexual Orientation and Gender Identity
UN	United Nations
UNHRC	United Nations Human Rights Council
UPR	Universal Periodic Review

NOTE: this paper will use the LGBTQI+ initialism, unless where a certain figure or document is focused on a particular variation of these identities.

## **Contemporary Advocacy by and Research on the Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Community of Sri Lanka**

This paper aims to provide an overview of contemporary advocacy by and research on the lesbian, gay, bisexual, transgender, queer, intersex and other (LGBTQI+) community of Sri Lanka. The first part of the paper focuses on LGBTQI+ advocacy, looking at both the domestic and international levels and identifies what issues were raised at particular fora; what the resulting institutional outcomes were; and what the eventual Government responses were. The second part of the paper looks at research on LGBTQI+ issues in Sri Lanka, examining academic and non-academic, as well as local and international publications, and identifying a number of broad thematic areas of research.

The paper considers advocacy and research from the past 15 years, from 2005 up to 2020, and as such aims to capture a contemporary portrait of LGBTQI+ advocacy and research in Sri Lanka. This period is a particularly consequential one in Sri Lanka as it features both the end of the armed ethnic conflict in 2009, as well as the 2005-2015 Mahinda Rajapaksa/UPFA and 2015-2019 Maithripala Sirisena/yahapālanaya Governments. As shall be seen, these developments, especially the changeovers in political administration, had noticeable effects on LGBTQI+ advocacy and research.

A limitation of this paper is that it only considers documents, reports and publications published in English, which excludes a number of sources produced in Sinhala and Tamil. As such, while the picture of advocacy by and research on LGBTQI+ community of Sri Lanka this paper provides is substantial on account of the ubiquity of English within both advocacy and research in Sri Lanka, it not wholly complete.

# ADVOCACY

## Domestic Advocacy

LGBTQI+ advocacy at the domestic level can be seen through one regular formal process—the drafting of the National Action Plans for the Protection and Promotion of Human Rights (NHRAPs)—and two irregular formal processes—the constitutional reform process of 2015-2019 and the Consultation Task Force on Reconciliation Mechanisms (CTF) in 2015. Outside of these formal processes, there have also been a number of informal advocacy efforts. While not all of them can be captured here due to their informal nature and consequent relative lack of documentation, an attempt is made to describe the most notable efforts.

### *National Action Plans for the Protection and Promotion of Human Rights*

The NHRAP for 2011-2016 was drafted in 2010. Civil society organisations were invited for consultation and contribution to the NHRAP, however, no LGBTQI+ organisation was invited to participate.<sup>1</sup> The first and second drafts of the proposed NHRAP included a provision for decriminalising homosexuality as submitted by civil society participants, however, it was evidently taken out from the final draft by President Rajapaksa.<sup>2</sup> The final NHRAP for 2011-2016 contained no LGBTQI-specific provisions.

In 2016, the subsequent Government initiated a comprehensive process to draft the new NHRAP for 2017-2021. A Cabinet mandated Inter-Ministerial Committee on Human Rights was appointed, which established a Steering Committee composed of senior officials from relevant Ministries, which then appointed Drafting Committees for various thematic areas consisting of experts drawn from relevant Government agencies and civil society organisations and academia.<sup>3</sup> These Committees called for public submissions regarding the development of the new NHRAP. In contrast to the previous process, a number of LGBTQI+ organisations were able to make submissions. The ensuing initial draft of the NHRAP included a commitment to repealing sections 365 and 365A of the Penal Code and expanding Article 12 of the Constitution to expressly prohibit discrimination based on sexual orientation or gender identity.<sup>4</sup>

However, the NHRAP process soon became highly politicised. The draft NHRAP was evidently amended by the Foreign Affairs Minister to drop certain provisions before being sent to the Cabinet of Ministers, where strong opposition by certain Ministers caused the recommendations to amend the Penal Code to be dropped altogether.<sup>5</sup> The NHRAP approved by Cabinet did not receive any further consultation from civil society.<sup>6</sup>

The final NHRAP for 2017-2021 included a recommendation to expand non-discrimination in the Constitution to include gender identity (but not sexual orientation); to review and amend

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<sup>1</sup> Equal Ground, *A submission to the United Nations Human Rights Council Universal Periodic Review of Sri Lanka*, March 2012, [https://lib.ohchr.org/HRBodies/UPR/Documents/Session14/LK/IS2\\_UPR\\_LKA\\_S14\\_2012\\_JointSubmission2\\_E.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session14/LK/IS2_UPR_LKA_S14_2012_JointSubmission2_E.pdf), p. 3.

<sup>2</sup> *Sunday Times*, "Talk at the Cafe Spectator", September 11, 2011, <http://www.sundaytimes.lk/110911/Columns/cafe.html>

<sup>3</sup> Ministry of Foreign Relations, "The National Action Plan for the Protection and Promotion of Human Rights (2017-2021)", <https://www.mfa.gov.lk/ta/6587-the-national-action-plan-for-the-protection-and-promotion-of-human-rights-2017-2021/>

<sup>4</sup> Coalition of NGOs for UPR - Sri Lanka (SOGI), *Joint Submission For 3rd Cycle UPR Review Of Sri Lanka*, 2017, [https://ilga.org/downloads/stakeholders\\_report\\_SriLanka\\_UPR28.pdf](https://ilga.org/downloads/stakeholders_report_SriLanka_UPR28.pdf), para 32.

<sup>5</sup> Sri Lanka Brief, "Sri Lanka- National HR Action Plan 2016-2021: Inclusive nature and integrity of the process questioned", February 04, 2017, <https://srilankabrief.org/2017/02/sri-lanka-national-hr-action-plan-2016-2021-inclusive-nature-and-integrity-of-the-process-questioned>

<sup>6</sup> Ibid.

the right to privacy in the Constitution; and to eliminate discriminatory practices within the healthcare setting based on one's perceived or actual sexual orientation.<sup>7</sup>In place of the recommendation to repeal sections 365 and 365A specifically, there is a vague recommendation to 'review the Penal Code offences to ensure that they are in compliance with the international Human Rights Standards and enact legislations where necessary'.<sup>8</sup> The final NHRAP, then, is a major disappointment from what the drafting and consultation process promised.

### ***Constitutional Reform***

In 2015, the newly-elected Government initiated a process for drafting a new Constitution for Sri Lanka. It commenced with the establishment of a Public Representations Committee on Constitutional Reform (PRC) to obtain public views on possible constitutional reforms. The PRC's Report would be reviewed by a Sub-Committee on Fundamental Rights, which would, in turn, make its own proposals on the new Constitution to the Constitutional Steering Committee, which would then present a final Constitutional draft to the Constitutional Assembly (which Parliament had reconvened itself as) for approval.<sup>9</sup>

During the PRC process, a number of LGBTIQ+ organisations and individuals made submissions, urging the explicit inclusion of sexual orientation and gender identity in the new Constitution's equality and non-discrimination provisions.<sup>10</sup> The Human Rights Commission of Sri Lanka (HRCSL), newly reconstituted as an independent commission through the Nineteenth Amendment to the Constitution of Sri Lanka in 2015, also presented its proposals which endorsed incorporating a strengthened non-discrimination clause that included a broadly articulated ground of sexual identity into a future constitution.<sup>11</sup>

These submissions were substantially reflected in the PRC's Report published in May 2016, which recommended that discrimination on the basis of sexual orientation and gender identity be expressly prohibited.<sup>12</sup> It also noted the importance of guaranteeing equal rights to privacy, free expression and association, family life, fair trial, work, social security, health and education for LGBTIQ+ individuals.<sup>13</sup> The PRC also called for the decriminalisation of adult, consensual same-sex sexual conduct and amendment of the Vagrants Ordinance.<sup>14</sup>

At a most broad level, the PRC argued that:

*the argument is not for special protection but equal rights for protection under the law and the right to non-discrimination.*<sup>15</sup>

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<sup>7</sup> Government of Sri Lanka, *National Action Plan for the Protection and Promotion of Human Rights 2017 - 2021*, Civil and Political Rights paras 3.1.1, 3.1.2 & 6.1.1.; Economic, Social and Cultural Rights para 6.6.4.

<sup>8</sup> Ibid., para 6.1.8.

<sup>9</sup> Constitutional Assembly of Sri Lanka, 'The Process', [http://english.constitutionalassembly.lk/index.php?option=com\\_sppagebuilder&view=page&id=13](http://english.constitutionalassembly.lk/index.php?option=com_sppagebuilder&view=page&id=13)

<sup>10</sup> Groundviews. *A Meaningful Right to Equality and Non-Discrimination: Recognising Sexual and Gender Identities*, March 28, 2016, <http://groundviews.org/2016/03/28/a-meaningful-right-to-equality-and-non-discrimination-recognising-sexual-and-gender-identities>

<sup>11</sup> Human Rights Commission of Sri Lanka, *Proposals for Constitutional Reform*, 2017, pp. II-III, <http://www.hrsl.lk/wp-content/uploads/2020/01/Report-to-ESCR-Committee-2017-by-HRCSL.pdf>

<sup>12</sup> Public Representations Committee on Constitutional Reform, *Report on Public Representations on Constitutional Reform*, May 10, 2016, p. 95.

<sup>13</sup> Ibid., pp. 113-4.

<sup>14</sup> Ibid., p. 114.

<sup>15</sup> Ibid., p. 112.

In June 2016, a number of LGBTIQ+ organisations spoke before the Sub-Committee on Fundamental Rights regarding the PRC's report. This was the first time that such organisations were invited to speak in Parliament.<sup>16</sup>

The Sub-Committee's November 2016 report to the Steering Committee omitted nearly all of the comprehensive recommendations in the PRC's report, barring the recommendation that the Constitution prohibit discrimination on the basis of sexual orientation and gender identity,; extending this as a right for children; and enabling post-enactment judicial review for all legislation.<sup>17</sup> The reform process thereafter became protracted, with the Steering Committee taking more than a year to produce its interim report. A draft of the constitution was made public in early 2019 and it reproduced the Sub-Committee's formulation of an anti-discrimination article inclusive of sexual orientation and gender identity grounds.<sup>18</sup> However, by this point reform process was all but terminated. It is highly unlikely that it will be taken up by the current Government which has embarked on its own constitutional reform process.

### ***Consultation Task Force on Reconciliation Mechanisms***

In January 2016, the Government established the Consultation Task Force on Reconciliation Mechanisms (CTF) to gather the public's views on proposed mechanisms for transitional justice and reconciliation following the armed ethnic conflict. A collective of LGBTIQ+ individuals and organisations made a comprehensive submission.<sup>19</sup>

The CTF's final report, released at the end of 2016, emphasised the need to include the LGBTIQ+ community in the design and implementation of any transitional justice mechanisms and highlighted concerns that specifically affected LGBTIQ+ individuals and their families:<sup>20</sup>

*In both the design and implementation of offices and processes, including vetting in appointments to ensure those engaged in gender based violence are not included and selection of beneficiaries to avoid exclusion based on notions of the 'traditional family', that LGBTIQ concerns needed to be integrated. ... officials working within such mechanisms should adopt a non-discriminatory approach towards persons with diverse gender expressions and sexual orientations.<sup>21</sup>*

*Definition of the term 'relative' to mean spouse or blood relatives only, restricts LGBTIQ partners from seeking redress. Therefore, provision of reparations should not be limited to those who fall under traditional definitions of family, but also include non-traditional family structures.<sup>22</sup>*

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<sup>16</sup> Coalition of NGOs for UPR - Sri Lanka (SOGI), *Joint Submission for 3rd Cycle UPR Review of Sri Lanka*, 2017, [https://ilga.org/downloads/stakeholders\\_report\\_SriLanka\\_UPR28.pdf](https://ilga.org/downloads/stakeholders_report_SriLanka_UPR28.pdf), para 39.

<sup>17</sup> Constitutional Assembly of Sri Lanka, *Report of Sub-Committee on Fundamental Rights, November 2016*, pp. 4, 13 & 16-7.

<sup>18</sup> Constitutional Assembly of Sri Lanka, 'Documents Tabled At the Constitutional Assembly on 11 January 2019', <https://english.constitutionalassembly.lk/media-centre/press-releases/152-documents-tabled-at-the-constitutional-assembly-on-11-january-2019>

<sup>19</sup> Groundviews, *Submission on LGBTIQ Persons and Transitional Justice Mechanisms*, August 25, 2016, <http://groundviews.org/2016/08/25/submission-on-lgbtqi-persons-and-transitional-justice-mechanisms>

<sup>20</sup> Consultation Task Force on Reconciliation Mechanisms, *Final Report of the Consultation Task Force on Reconciliation Mechanisms*, Vol. 1, 17 Nov. 2016, available at <http://war-victims-map.org/wp-content/uploads/2017/02/CTF-Final-Report-Volume-1-Nov-16.pdf>, pp. 55 & 89, and 354-55.

<sup>21</sup> *Ibid.*, para 207, p. 355.

<sup>22</sup> *Ibid.*, para 88, p. 55.

*Written submissions representing the needs of persons who identify as LGBTIQ have called for a process that allows them to make applications for reparation without discrimination and ridicule.<sup>23</sup>*

The CTF process was eventually completely ignored by the Government; the President and Prime Minister did not attend the launch of its report and senior ministers later attacked it.<sup>24</sup> The transitional justice programme came to a virtual standstill, with only one out of four promised mechanisms (the Office on Missing Persons) materialising. The OMP to date has not made any particular statements or provisions addressing LGBTIQ+ individuals affected by the conflict. Under the new Government, it is highly unlikely that the remaining mechanisms or any transitional justice programme in general would be implemented.

### ***Advocacy on HIV/AIDS***

Advocacy on HIV/AIDS prevention, treatment and education has been a longstanding pursuit of Sri Lankan LGBTIQ+ organisations, and continued apace during the surveyed 15 years. This advocacy is somewhat unique relative to other advocacy efforts in that it remains comparatively depoliticised and accepted and increasingly welcomed by state authorities. In particular, the National STD/AIDS Control Programme (NSACP) regularly collaborates with LGBTIQ+ organisations on prevention and treatment strategies, including pioneering interventions with older LGBTIQ organisations such as Companions on a Journey and Equal Ground, as well as wider research efforts such as mapping exercises and surveillance surveys. A number of these are highlighted in the ‘HIV-Related Interventions’ section in the Research component of this paper.

These relationships also resulted in the LGBTIQ+ organisations Positive Hopes Alliance and Young Out Here having representation on the steering committee for developing the NSACP’s National Strategic Plan for 2018-2022.<sup>25</sup> The finalised Plan expressly identifies the Vagrancy Ordinance and Penal Code sections 365 and 365A as ‘severe’ laws making it difficult for key populations to access HIV/STI services.<sup>26</sup> The Plan as an indicator and target a resolve for the NSACP to ‘advocate for revisiting’ these laws by re-activating the National Aids Council and its legal and ethical subcommittee.<sup>27</sup> The NSACP is thus the sole Government authority in Sri Lanka to recognise and call for the decriminalisation of same-sex sexual conduct.

### ***Gender Recognition Certificate process***

Following complaints from three transgender women to the HRCSL in 2015 after being rejected by the Registrar General’s Department to change their legal gender, the HRCSL facilitated a dialogue on legal gender recognition with LGBTIQ+ advocates and Government stakeholders including the Ministry of Health and Registrar General’s Department.<sup>28</sup> As a result of this, the Ministry of Health issued a circular in 2016 to health service practitioners on issuing the Gender

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<sup>23</sup> Ibid., para 242, p. 89.

<sup>24</sup> International Crisis Group, *Sri Lanka’s Transition to Nowhere*, Asia Report N°28, Brussels: ICG, 2017, <https://d2071andvip0wj.cloudfront.net/286-sri-lanka-s-transition-to-nowhere.pdf>, pp. 16-7.

<sup>25</sup> National STD/AIDS Control Programme (NSACP), *National HIV/STI Strategic Plan Sri Lanka 2018-2022*, Colombo: NSACP, 2017, p. 47.

<sup>26</sup> Ibid., pp. 22-23.

<sup>27</sup> Ibid., p. 40.

<sup>28</sup> Asia Pacific Forum of National Human Rights Institutions & UNDP, *Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics: A Manual for National Human Rights Institutions*, 2016, p. 59.



Recognition Certificate (GRC) to transgender people. The Registrar General's Department issued a parallel circular authorising registrars and other relevant departments to change sex and name details on birth certificates and other official documents based on a person's GRC.<sup>29</sup>

The GRC process involves a consultant psychiatrist authorising the GRC by certifying that the transgender person has been referred to "hormone therapy" and "necessary surgical treatments" and that "the person underwent gender transformation process."<sup>30</sup> The psychiatrist must also certify that the person has completed "the social gender role transition as required".<sup>31</sup>

There are a number of flaws with the GRC process. By mandating psychiatric diagnosis, it contradicts international best practice which recommends that medical, surgical, or psychiatric treatment or diagnosis should not be required for legal gender change.<sup>32</sup> Likewise, changes to birth certificates are made by amending existing certificates, and not by issuing fresh certificates, which means that transgender people are still identifiable as such in the myriad situations birth certificates are required in Sri Lanka (other official documents, such as National Identity Cards and passports, however, can be issued anew).

The GRC process is still an improvement over the previous situation as a transgender person no longer has to submit written evidence of parental consent or a surgeon's written verification of a clinical diagnosis and genital reconstruction surgery. Legal gender change is also no longer dependent on the discretion of multiple public and health authorities.

### ***Advocacy Within the JVP***

On the October 26, 2018, then President Maithripala Sirisena abruptly sacked the Prime Minister Ranil Wickremesinghe, and appointed former President and Member of Parliament Mahinda Rajapaksa in his place, pushing the country into a constitutional crisis. While the President offered several justifications for this decision, at a political rally he said he wanted to change the Prime Minister as he could not agree with his "butterfly" lifestyle, adding that "those who made important decisions in the Government were not the senior Cabinet ministers but this butterfly gang". Butterfly in the Sinhala language is a queerphobic slur. LGBTIQ+ Sri Lankans and organisations were quick to condemn this statement by protesting, issuing public petitions and convening media briefings.<sup>33</sup>

Against the backdrop of this, the opposition Janatha Vimukthi Peramuna (JVP) expressed its support of equal rights for the LGBTIQ+ community in Sri Lanka.<sup>34</sup> It also invited members of the LGBTIQ+ community to be part of a broad progressive alliance.<sup>35</sup> The JVP continued its

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<sup>29</sup> Registrar-General's Department, *Circular No 06/2016*, 28 June 2016.

<sup>30</sup> Ministry of Health, *General Circular No: 01-34/2016 on Issuing of Gender Recognition Certificate for Transgender Community*, 16 June 2016.

<sup>31</sup> Ibid.

<sup>32</sup> Human Rights Watch, "All Five Fingers Are Not the Same" *Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka*, 2016.

<sup>33</sup> *Daily Mirror*, "LGBTIQ+ community condemns Prez's remarks on 'butterfly life'", November 6, 2018, <http://www.dailymirror.lk/article/LGBTIQ-community-condemns-Prez-s-remarks-on-butterfly-life--157968.html>

<sup>34</sup> Ibid.

<sup>35</sup> Waradas Thiyagaraja, 'JVP stands for non-discrimination of LGBTIQ persons', *Daily Mirror*, November 16, 2018, <http://www.dailymirror.lk/158438/JVP-stands-for-non-discrimination-of-LGBTIQ-persons>

engagement with LGBTQI+ advocates into 2019 and 2020 and made a number of public comments supportive of the community.<sup>36</sup>

This culminated in Anura Kumara Dissanayake, the candidate for the National People's Power (NPP), the JVP-led alliance to contest the Presidential Election, reiterating support for the LGBTQI+ community at his first public rally as presidential candidate.<sup>37</sup> Further, his manifesto included a dedicated section on the LGBT community with commitments to amend Penal Code sections 365 and 365A; enact legislation to address hate speech and violence against the LGBTQI+ community; enact anti-discrimination measures; and establish a 'dedicated secretariat for the protection of the LGBT community and to address their grievances'.<sup>38</sup> The Samābhimāni Collective, a group of LGBTQI+ advocates, was named as one of the NPP's 18 constituent groups, and its members spoke at a number of NPP public rallies, meetings and discussions.<sup>39</sup>

The comments and commitments made by the JVP, Dissanayake and the NPP manifesto in support of the LGBTQI+ community were the first such comments and commitments to be made by a mainstream political party in Sri Lanka.<sup>40</sup> They are especially notable given the homophobic public comments made earlier in 2015 by JVP MP Nalinda Jayatissa, signalling a volte-face in the JVP's position.<sup>41</sup> In any case, Dissanayake placed a distant third in the Presidential Election, garnering 3.16 percent of votes.

The political impact of the NPP's pro-LGBTQI+ position, in terms of whether it attracted or dispelled voters, is unclear. It also did not influence other candidates and political parties to take up a similar position. Neither the eventual victor of the presidential contest, Gotabhaya Rajapaksa of the Sri Lanka Podujana Peramuna nor the runner-up Sajith Premadasa of the Samagi Jana Balawegaya, expressed any support for the LGBTQI+ community in their manifestos or campaigning. Equally, however, there were no strong anti-LGBTQI+ sentiments expressed during the campaign by the major candidates either.

## International Advocacy

LGBTQI+ advocacy internationally over the 15 years from 2005 up to 2020 has centred on Sri Lanka's assessment at one major human rights review process—the Universal Periodic Review (UPR)—and at four treaty bodies, the Human Rights Committee (HRCComm), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Discrimination Against Women (CEDAW) and the Committee on the Rights of the Child (CRC). These advocacy efforts and their resulting outcomes, both at the reviewing bodies and in Government responses, are summarised below.

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<sup>36</sup> *Colombo Telegraph*, 'JVP Vows To Fight For The Rights Of Oppressed LGBTIQ+ Community', July 9, 2019, <https://www.colombotelegraph.com/index.php/jvp-vows-to-fight-for-the-rights-of-oppressed-lgbtq-community/>

<sup>37</sup> *Sri Lanka Brief*, 'Sri Lanka: A Presidential Candidate's pledge to support LGBTQ+ rights', September 21, 2019, <https://srilankabrief.org/2019/09/sri-lanka-a-presidential-candidates-pledge-to-support-lgbtq-rights/>

<sup>38</sup> National People's Power, *Hope For The Nation: Policy Manifesto*, 2019, p. 50.

<sup>39</sup> Sumudu Chamara, 'LGBT people should vote for NPP to end discrimination –Waradas', *Ceylon Today*, November 12, 2019, <https://ceylontoday.lk/news-more/8997>; National People's Power, 'The Only Leader in History to Support LGBTQI+ rights is the NPP's Candidate – ThenuRanketh', Samābhimāni Collective, November 12, 2019, <https://www.facebook.com/nppsrilanka/posts/526635057917023>

<sup>40</sup> Thiyagaraja, 'JVP stands for non-discrimination of LGBTIQ persons'.

<sup>41</sup> Athula Vithanage, 'JVP in Sri Lanka 'totally' opposed to LGBT rights', *Journalists for Democracy in Sri Lanka*, December 21, 2015, [www.jdslanka.org/index.php/news-features/politics-a-current-affairs/578-jvp-in-sri-lanka-totally-opposed-to-lgbt-rights](http://www.jdslanka.org/index.php/news-features/politics-a-current-affairs/578-jvp-in-sri-lanka-totally-opposed-to-lgbt-rights)

### ***Universal Periodic Review***

During the surveyed period, the UPR was initiated by the UN Human Rights Council (UNHRC) and conducted three times. The UPR process reviews the human rights situation of UN member states every five years by taking into account reports submitted by the state party being reviewed, submissions from stakeholders in the member state, and assessments by the Office of the High Commissioner for Human Rights. The process results in recommendations being issued and state parties responding to them and making commitments to be reviewed at the next UPR. Sri Lanka underwent the UPR process in 2008, 2013 and 2017.

## ***First Universal Periodic Review***

In the first review in 2008, issues relating to the LGBTQI+ community in Sri Lanka were directly addressed by four civil society submissions: by the Women and Media Collective;<sup>42</sup> by Equal Ground;<sup>43</sup> jointly by ILGA-Europe, Equal Ground, the International Gay and Lesbian Human Rights Commission and ARC International;<sup>44</sup> and jointly by 29 CSOs in Sri Lanka.<sup>45</sup>

These submissions highlighted issues such as state sanctioned hate speech on the basis of sexual orientation, the use of the legal system to harass human rights defenders working for LGBTQI+ rights; impunity for crimes committed against LGBTQI+ people; violence, death threats and extrajudicial killings based on sexual orientation; and marginalisation and widespread persecution of LGBTQI+ individuals.<sup>46</sup> These issues were brought up in the context of the escalating civil war at the time, whose resultant deterioration in public security was emphasised as putting LGBTQI+ individuals at even greater risk due to endemic social marginalisation.<sup>47</sup> In the socioeconomic sphere, the submissions highlighted that LGBTQI+ individuals are denied access to health services, education and employment and the ability to meaningfully participate in social and public life.<sup>48</sup>

The submissions all uniformly recommended the Sri Lankan state to decriminalise same-sex sexual conduct, enact equality and non-discrimination measures on the basis of sexual orientation and gender identity, and introduce a constitutional right to privacy. The first UPR did not yield any LGBTQI-specific recommendations from the UNHRC's Working Group or reviewing states and thus Sri Lanka did not have to respond to LGBTQI+ issues as a state party.

## ***Second Universal Periodic Review***

In Sri Lanka's second UPR in 2012, issues relating to the LGBTQI+ community in Sri Lanka were directly addressed by three civil society submissions: by Equal Ground;<sup>49</sup> by the Coalition for Sexual Rights;<sup>50</sup> and jointly by 29 national civil society organisations in Sri Lanka.<sup>51</sup> The submissions noted that no significant progress had been made on LGBTQI+ issues by the Government since the first UPR, against a backdrop of escalating media attacks on the community and its members.<sup>52</sup> They also pointed out that national human rights mechanisms such as the HRCSL and the NHRAP were not proactively taking up LGBTQI+ issues.<sup>53</sup> The submissions repeated many of the recommendations from the first UPR in substance.

The second UPR yielded two LGBTQI-specific recommendations which were both rejected by the Government:

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<sup>42</sup> Women and Media Collective, *Submissions Made to the Universal Periodic Report of Sri Lanka*, Colombo, 2008.

<sup>43</sup> Equal Ground, *Submission to the First UN Universal Periodic Review (Sri Lanka)*, Colombo, 2012.

<sup>44</sup> ILGA-Europe, Equal Ground, the International Gay and Lesbian Human Rights Commission and ARC International, *Joint Submission to the First UN Universal Periodic Review (Sri Lanka)*, Brussels, 2008.

<sup>45</sup> *Joint Civil Society Submission to the First Universal Periodic Review – Sri Lanka*, Colombo, 2008.

<sup>46</sup> Equal Ground, *Submission to the First UN Universal Periodic Review (Sri Lanka)*, p. 1; See also ILGA-Europe et al, *Joint Submission*, p.1.

<sup>47</sup> See also ILGA, *Joint Submission*, pp. 2-3

<sup>48</sup> *Joint Civil Society Submission to the First Universal Periodic Review – Sri Lanka*, Colombo, 2008, p.6.

<sup>49</sup> Equal Ground, *Submission to the Second UN Universal Periodic Review (Sri Lanka)*, 2012.

<sup>50</sup> Coalition for Sexual Rights, *Submission to the Second UN Universal Periodic Review (Sri Lanka)*, Colombo, 2012.

<sup>51</sup> *Joint Civil Society Submission to the Second UN Universal Periodic Review (Sri Lanka)*, Colombo, 2012.

<sup>52</sup> *Ibid.*, paras 13(1) and (2).

<sup>53</sup> Equal Ground, *Submission to the Second UN Universal Periodic Review (Sri Lanka)*, 2012.

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

### ***Third Universal Periodic Review***

In Sri Lanka's third UPR in 2017 issues relating to the LGBTQI+ community in Sri Lanka were directly addressed by a wide range of civil society submissions, both in individual capacities and as joint submissions.<sup>54</sup> LGBTQI+ and LGBTQI-focused organisations submitting included Equal Ground, Young Out Here, Grassrooted Trust and the Women and Media Collective. In addition, the HRCSL also made a submission.<sup>55</sup>

These submissions focused one again on the lack of progress since the previous UPR, as well as the new sociopolitical dynamics following the change in Government in 2015, which included widening space for civil society activism but was also accompanied by inaction on LGBTQI+ issues and negative political moves against the community.<sup>56</sup> A wider range of socio-political issues, including factors leading to material deprivation; bureaucratic delays in organising activist events; flaws in the newly introduced Gender Recognition Certificate (GRC) process, the ongoing constitutional reform process, were brought up by submitters.<sup>57</sup> The HRCSL concurred with the need for decriminalising same sex sexual conduct and widening anti-discrimination provisions.<sup>58</sup>

The third UPR yielded nine LGBTQI-specific recommendations. The Government accepted three recommendations:<sup>59</sup>

1. Prevent and combat all kind of discrimination, in particular those on the grounds of ethnicity and sexual orientation (Italy);
2. Ensure respect for the rights and fundamental freedoms of lesbian, gay, bisexual, transgender and intersex persons, by investigating and sanctioning acts of discrimination and violence against such persons (Argentina);
3. Adopt measures to eliminate all forms of discrimination in health-care settings, including in the context of HIV/AIDS, while paying particular attention to the specific needs of key populations, including lesbian, gay, bisexual, transgender and intersex persons (Portugal)

The Government 'noted' six recommendations:<sup>60</sup>

4. Amend the Penal Code, particularly Sections 365 and 365A, to decriminalize consensual same-sex conduct and displays of affection (Netherlands);

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<sup>54</sup> See: UNHRC, *Summary of stakeholders' submissions on Sri Lanka*, A/HRC/WG.6/28/LKA/3, August 8, 2017.

<sup>55</sup> HRCSL, *Submission by HRCSL to the Third Universal Periodic Review of Sri Lanka*, Colombo, 2017.

<sup>56</sup> UNHRC, *Summary of stakeholders' submissions on Sri Lanka*, paras 6, 7 & 45.

<sup>57</sup> Ibid.

<sup>58</sup> HRCSL, *Submission by HRCSL to the Third Universal Periodic Review of Sri Lanka*, Colombo, 2017, paras 35 & 36.

<sup>59</sup> United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Sri Lanka*, A/HRC/37/17, December 29, 2017, Recommendations 116.37-39.

<sup>60</sup> Ibid., Recommendations 117.20-25.

5. Decriminalize same-sex relations and take concrete measures to combat discrimination and violence against the lesbian, gay, bisexual, transgender and intersex community (Brazil);
6. Decriminalise same-sex conduct by repealing Sections 365 and 365A of the Penal Code (Canada);
7. Amend the Penal Code, particularly Sections 365 and 365A, to decriminalise consensual same-sex conduct as well as displays of affection (Sweden);
8. Modify the criminal code in order to decriminalise consensual sexual behaviour between persons of the same sex, suppress degrading terms that could be used against the lesbian, gay, bisexual, transgender and intersex community, and avoid abuse and harassment by police authorities (Uruguay);
9. Decriminalise same-sex consensual relationships and adopt all necessary measures to combat discrimination and violence based on sexual orientation or gender identity, and guarantee access of lesbian, gay, bisexual, transgender and intersex people to health services (Honduras).

Notably, the Government appeared to make a commitment to changing the Penal Code in the interactive dialogue, stating that ‘the Government is committed to reforming the Penal Code to ensure that all offences contained in the Code are in compliance with international human rights standards’ and that it is committed to ensuring that ‘no provision in the law would be applied to persons of the LGBTIQ community in a discriminatory manner’.<sup>61</sup>

### ***Human Rights Committee***

The UN Human Rights Committee (HRC) conducts periodic review of member states’ compliance with the International Covenant on Civil and Political Rights (ICCPR). The HRC accepts submissions from civil society organisations in the course of conducting its reviews.

Sri Lanka’s fifth periodic report for the HRC was due at the end of 2014. In response, a number of shadow reports by civil society organisations were submitted, including a joint one led by Equal Ground;<sup>62</sup> by the International Gay and Lesbian Human Rights Commission (IGLHRC);<sup>63</sup> and by the Kaleidoscope Human Rights Foundation.<sup>64</sup>

These submissions raised the issues of criminalisation of same-sex sexual conduct; arbitrary arrests, detentions and abusive and violent police behaviour; suppression of expression; and state failure to protect against discrimination, hate crimes, and forced marriages by private actors. These issues were argued as violations of LGBTIQ+ individuals’ ICCPR rights of equality and non-discrimination, privacy, remedies, to be free from arbitrary arrest and detention, freedom of Expression, Assembly and Association.

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<sup>61</sup> *Sunday Observer*, “The battle against homophobia in Sri Lanka”, September 22, 2018.

<sup>62</sup> Equal Ground, the Center for International Human Rights of Northwestern University School of Law, and the Global Initiative for Sexuality and Human Rights (GISHR) of Heartland Alliance for Human Needs & Human Rights, *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka: A Shadow Report*, Dec 2013, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared Documents/LKA/INT\\_CCPR\\_ICO\\_LKA\\_15986\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf),

<sup>63</sup> International Gay and Lesbian Human Rights Commission, *Violence Against Lesbians, Bisexual Women and Transgender Persons in Sri Lanka*, October 2014, <https://outrightinternational.org/sites/default/files/SriLanka1014WCover.pdf>

<sup>64</sup> Kaleidoscope Human Rights Foundation, *Shadow Report to the UN Human Rights Committee regarding Sri Lanka’s protection of the Rights of LGBTI Persons (Response to List of Issues)*, September 2014, <http://www.kaleidoscopeaustralia.com/wp-content/uploads/2014/09/Sri-Lanka-Report-Final.pdf>

In its List of Issues, the HRCComm asked Sri Lanka to ‘indicate the measures taken to protect persons from stigmatization and discrimination on the basis of sexual orientation and gender identity, and indicate whether they are protected by the constitutional provisions on non-discrimination.’<sup>65</sup> In addition, in its Concluding Observations following the review, it recommended amending the Penal Code to ensure non-discrimination rights; amending the Constitution to make sexual orientation and gender identity explicit prohibited grounds for discrimination; and strengthening measures to protect against violations of LGBTI rights and strengthening awareness-raising and training measures on such rights.<sup>66</sup>

In response, Sri Lanka argued in its next periodic report in 2019 that ‘the prohibited grounds of discrimination under article 12 (2) of the Constitution are non-exhaustive, and discrimination on the grounds of sexual orientation is implicitly prohibited’, and further that ‘acts that deny equal protection of the law or discriminate on the grounds of sexual orientation are prohibited under the Sri Lankan Constitution’.<sup>67</sup> It also brought up constitutional reform and the 2016 Supreme Court judgment in *Wimalasiri v. Maradana OIC and Attorney-General* (Supreme Court Appeal 32/11) as a positive measure against the criminalisation of same-sex sexual conduct.<sup>68</sup>

### ***Committee on Economic, Social and Cultural Rights***

The Committee on Economic, Social and Cultural Rights (CESCR) conducts periodic review of member states’ compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR). Issues affecting the LGBTQI+ emerged in Sri Lanka’s fifth periodic review in 2017.

In its List of Issues, the CESCR requested Sri Lanka to ‘provide information on the measures taken to repeal all legal and regulatory provisions that discriminate or have discriminatory effects on lesbian, gay, bisexual, transgender and intersex persons, and on policies adopted to protect them against discrimination.’<sup>69</sup>

A joint submission to the CESCR was made by Equal Ground, the Center for International Human Rights of Northwestern University School of Law, and the Global Initiative for Sexuality and Human Rights (GISHR) of Heartland Alliance for Human Needs & Human Rights.<sup>70</sup> It pointed out that Sri Lanka’s Constitution and laws fail to adequately protect the human rights of LGBT individuals; LGBT individuals suffer multiple violations of the right to non-discrimination in employment, housing, health care, and education and the right to be married; and suggested that questions on constitutional reform, decriminalisation, GRCs, rights-violating state actors and social awareness be raised by the CESCR with Sri Lanka.<sup>71</sup>

In its Concluding Observations, the CESCR recommended that Sri Lanka expand the non-discrimination clause in Article 12(2) of the Constitution to include sexual orientation or gender

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<sup>65</sup> UN Human Rights Committee, *List of issues in relation to the fifth periodic report of Sri Lanka*, CCPR/C/LKA/Q/5, 23 April 2014, para 5

<sup>66</sup> UN Human Rights Committee, *Concluding observations on the fifth periodic report of Sri Lanka*, CCPR/C/LKA/CO/5, 30 Oct 2014, para 8

<sup>67</sup> ‘Sri Lanka: Periodic Report’, State party’s report, CCPR/C/LKA/6, 22 Feb 2019, para 28

<sup>68</sup> *Ibid.*, paras 29 and 30.

<sup>69</sup> UN Committee on Economic, Social and Cultural Rights, *List of issues in relation to the fifth periodic report of Sri Lanka*, E/C.12/LKA/Q/5, 7 November 2016, para 9

<sup>70</sup> Equal Ground, the Center for International Human Rights of Northwestern University School of Law, and the Global Initiative for Sexuality and Human Rights (GISHR) of Heartland Alliance for Human Needs & Human Rights, *Human Rights Violations Against Lesbian, Gay, Bisexual And Transgender People In Sri Lanka: A Shadow Report*, August 2016

<sup>71</sup> *Ibid.*

identity; decriminalise same-sex sexual conduct; take urgent steps to combat and prevent violence against LGBTQI+ individuals; ensure their equal enjoyment of rights to health, education, work and housing; and to develop and implement training programmes to educate and sensitise public officials on issues affecting LGBTQI+ individuals.<sup>72</sup>

In response, Sri Lanka reiterated that the grounds of non-discrimination Article 12 of the Constitution are not exhaustive and ‘could cover differences pertaining to sexual orientation as well’.<sup>73</sup> It also cited that “sexual orientation” will be included as a ground of non-discrimination through the ongoing constitutional reform process; that post enactment judicial review of legislation is envisaged to address discriminatory penal provisions; and that the NHRAP 2017-2021 included a provision to bring Penal Code offences in line with international standards.<sup>74</sup> This is despite the specific provisions regarding sections 365 and 365A being removed by the Government from the NHRAP 2017-2021.

### ***Committee on Elimination of Discrimination Against Women***

The Committee on the Elimination of Discrimination Against Women (CEDAW) conducts periodic review of member states’ compliance with the Convention on the Elimination of All Forms of Discrimination Against Women. The CEDAW invites submissions from CSOs during its member state reviews. Issues affecting the LGBTQI+ community emerged in the review of Sri Lanka’s combined fifth, sixth and seventh periodic reports in 2011 and its eighth periodic report in 2017.

The NGO Shadow Report submitted by the Women and Media Collective on behalf of 61 Sri Lankan CSOs made mention that extending same-sex relationships to be in line with the principles of non-discrimination in Article 12 the Constitution would require a review of the Penal Code and the decriminalisation of homosexuality.<sup>75</sup> The report also mentioned the Vagrants and Brothels Ordinances as needing extensive review and amendment.<sup>76</sup> The Shadow Report submitted by the Women’s Support Group focused specifically on the status of lesbian, bisexual and transgender women in Sri Lanka.<sup>77</sup>

In its Concluding Observations in 2011, the CEDAW expressed its concern that ‘the criminalization of same sex relationship results in women being completely excluded from legal protection’ and recommended that the Government ‘decriminalize sexual relationship between consenting adults of same sex, and abide by the obligation of non-discrimination under the Convention’.<sup>78</sup> Sri Lanka responded in 2015 that sections 365 and 365A of the Penal Code ‘does

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<sup>72</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the fifth periodic report of Sri Lanka*, E/C.12/LKA/CO/5, 7 November 2016, para 17 and 18

<sup>73</sup> Committee on Economic, Social and Cultural Rights, *List of issues in relation to the fifth periodic report of Sri Lanka - Replies of Sri Lanka to the list of issues*, E/C.12/LKA/Q/5/Add.1, 11 August 2017, paras 52-55.

<sup>74</sup> *Ibid.*, para 51.

<sup>75</sup> Women and Media Collective, *Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women*, p 34.

<sup>76</sup> *Ibid.*, pp 36-7.

<sup>77</sup> Women's Support Group, *The Status of Lesbians, Bisexual, Women and Transgendered Persons in Sri Lanka: NGO Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women*, January 2011, [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WSG\\_SriLanka48.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WSG_SriLanka48.pdf)

<sup>78</sup> Committee on Elimination of All Forms of Discrimination against Women, *Concluding Observations*, CEDAW/C/LKA/CO/7, April 8, 2011, para 25(g).



not detract from the Constitutional guarantee under Article 12 of the Constitution on protection from discrimination on the grounds of sexual orientation or gender identity'.<sup>79</sup>

For the review process in 2017, the submission made by the Women and Media Collective recommended enacting decriminalisation and non-discrimination provisions, 'irrespective of the Constitution reform processes'.<sup>80</sup> The joint submission made by the Kaleidoscope Human Rights Foundation and Equal Ground made a number of recommendations including on non-discrimination and decriminalisation, as well as changing the GRC process to allow transgender persons to legally change their gender without sex affirmation surgery as a prerequisite; socio-economic equality and protections for LGBTI persons in rural areas; same-sex marriage; and allowing LGBTI persons to adopt children.<sup>81</sup>

In its Concluding Observations in 2017, the CEDAW recommended that sexual orientation and gender identity be included in a new constitution as a prohibited ground for discrimination; that temporary special measures be adopted to achieve gender equality with special attention paid to women from sexual minorities; and the Vagrants' Ordinance be repealed.<sup>82</sup> Sri Lanka has not yet had an opportunity to respond.

### ***Committee on the Rights of the Child***

The Committee on the Rights of the Child (CRC) conducts periodic review of member states' compliance with the Convention on the Rights of the Child. The UNCRC invites submissions from CSOs during its member state reviews. Issues affecting the LGBTIQ+ community emerged in the review of Sri Lanka's combined fifth and sixth periodic reports in 2018.

A submission by Equal Ground pointed out that discrimination and violation of the rights of children on the basis of their sexual orientation and gender identity is prevalent in Sri Lanka, and recommended legislative and educational awareness measures to address this.<sup>83</sup> A submission by Protecting Environment and Children Everywhere and ECPAT International noted that the criminalisation of same-sex sexual conduct may put children in danger as it does not explicitly exempt children from the crime, thus a child might be treated as an offender instead of a victim in exploitative situations.<sup>84</sup> The submission by the All Survivors Project notes that LGBTI persons are vulnerable to sexual violence because they 'challenge accepted gender norms concerning sexual orientation and gender expression'.<sup>85</sup>

In its Concluding Observations, the CRC recommended with regards to the Convention's non-discrimination provisions that Sri Lanka 'adopt a proactive and comprehensive strategy containing specific and well-targeted actions, including affirmative social actions to eliminate discrimination against children in marginalized or vulnerable situations, including ... lesbian,

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<sup>79</sup> Committee on Elimination of All Forms of Discrimination against Women, *Eighth periodic report of States parties due in 2015 - State Party's Report*, Sri Lanka, CEDAW/C/LKA/8, May 29, 2015, para 36.

<sup>80</sup> Women and Media Collective, *Sri Lanka Shadow Report To the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW)*, January 2017, p. 11.

<sup>81</sup> Kaleidoscope Human Rights Foundation and Equal Ground, *Parallel Report to the UN Committee on the Elimination of Discrimination Against Women Regarding Sri Lanka's Protection of the Rights of LGBTI Persons*, 2017, paras 2.2.1-8

<sup>82</sup> Committee on the Convention on the Elimination of Discrimination Against Women, *Concluding observations on the seventh periodic report of Sri Lanka*, CEDAW/C/LKA/CO/8, 9 March 2017, paras 11, 21, 27(g)

<sup>83</sup> Equal Ground, *Report On the Rights of Children of Diverse Sexual Orientations and Gender Identities in Sri Lanka*, February 2017.

<sup>84</sup> Protecting Environment and Children Everywhere (PEaCE/ECPAT Sri Lanka) and ECPAT International, *Alternative Report*, February 28, 2017, p. 11.

<sup>85</sup> All Survivors Project, *Sexual violence against men and boys in Sri Lanka and Bosnia & Herzegovina*, 2017, p. 17.

gay, bisexual, transgender and intersex (LGBTI) children'.<sup>86</sup> It also recommended to Sri Lanka to 'Combat discrimination against LGBTI children, including by decriminalizing consensual same sex acts, prohibit harassment of transgender children by law enforcement personnel, and bring perpetrators of violence, including of sexual abuse of LGBTI children, to justice'.<sup>87</sup>

The CRC also observed:

*The lack of legal recognition of male rape and under-reporting of sexual abuse of boys because of stigmatisation, criminalisation of homosexuality, and feeling ashamed of so-called "emasculatation".*<sup>88</sup>

It recommended that Sri Lanka 'develop an effective and comprehensive policy for preventing the sexual abuse and exploitation of children' and that it 'take prompt measures to revise article 363 of the Penal Code to criminalize statutory rape of boys, and take large-scale awareness raising measures to encourage the reporting of rape of boys, to eliminate stigma associated with it, and to ensure accessible, confidential, child-friendly and effective reporting channels for such violations'.<sup>89</sup> Sri Lanka is yet to respond.

## **Reflections on Domestic and International LGBTQI+ Advocacy**

LGBTQI+ advocacy shows a trend of an increasing number of LGBTQI+ focused organisations being engaged over the surveyed period. As a result, LGBTQI+ issues are now mentioned regularly at formal processes both domestically and internationally. Further, while decriminalisation and anti-discrimination remain constants in advocacy, a wider array of issues (premised on human rights frameworks and discourse) have also emerged.

The surveyed period shows certain shifts in the Sri Lankan Government's strategy in responding to LGBTQI+ issues. Domestically, the Mahinda Rajapaksa/UPFA administration maintained a stance of indifference with regards to LGBTQI+ advocacy (all the while enabling violence and discrimination against the community). Internationally, its responses at best displayed a brief insistence that non-discrimination towards the LGBTQI+ community could be contemplated constitutionally (under Article 12). Otherwise, there were no substantive efforts at addressing or even acknowledging the LGBTQI+ community.

The change in Government in 2015 saw a greater number of opportunities for domestic advocacy and a greater acknowledgment of the LGBTQI+ community and its issues internationally. While recognition of the community and its issues at certain domestic fora is to be welcomed, in retrospect they appear as merely opportunities to register the LGBTQI+ community's concerns, unaccompanied by any meaningful prospect or political will towards addressing them.

Internationally, the Government has acknowledged the LGBTQI+ community less combatively while taking pains to stress that it intended to address LGBTQI+ issues. In substance, these responses relied on stronger insistence on reading non-discrimination on grounds of sex orientation and gender identity into the current Constitution (supplemented by domestic legal

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<sup>86</sup> Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Sri Lanka*, CRC/C/LKA/CO/5-6, February 2, 2018, [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/LKA/CRC\\_C\\_LKA\\_CO\\_5-6\\_30178\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/LKA/CRC_C_LKA_CO_5-6_30178_E.pdf), para 16(b).

<sup>87</sup> *Ibid.*, para 16(c).

<sup>88</sup> *Ibid.*, 23(b).

<sup>89</sup> *Ibid.*, para 24.

developments such as the *Wimalasiri* judgment). Government responses in this period also relied heavily on the constitutional reform process, and the promise of substantive constitutional non-discrimination and rights measures. The repeated reliance on these began to appear tired as the Government's term went on, however, particularly because the constitutional reform process had stalled and because the Government had enacted few measures for the benefit of the LGBTQI+ community.

At the end of the decade then, the yahapālanaya Government's stance towards the LGBTQI+ community appears particularly hollow and manipulative, with no substantial progress or commitments being made. It is unclear what exact direction the change in Government in 2019 to the Gotabaya Rajapaksa/SLPP administration portends. Given that it consists largely of political groupings and personnel from the 2005-2014 Mahinda Rajapaksa/UPFA administration, however, it is likely it will be down a socially conservative path prejudiced against the LGBTQI+ community.

Overall, the success of LGBTQI+ advocacy efforts has been limited. Decriminalisation and the enactment of anti-discrimination legislation have not been achieved, and have only registered very lightly on the domestic mainstream political agenda. This lack of success cannot be attributed wholly to the advocacy efforts themselves, as each of the formal advocacy processes LGBTQI+ advocates engaged with were subject to politicisation far beyond their control. It does, however, raise the questions about the efficacy of continued engagement at the formal political level (that is to say, with high level public representatives, officials and institutions), given that the political composition and dynamics at that level have not substantially changed.

Overall, advocacy over the 15 years from 2005 up to 2020 displays a broad human rights focus. This has certainly been by necessity, given the disproportionate influence criminalisation and the lack of substantive political protections have on LGBTQI+ Sri Lankans' lives. However, this human rights focus has also come in place, or at the expense, of a focus on matters of material welfare directly (instead of merely as articulations through social, economic and cultural rights). Such a focus would advocate, for example, for measures such as direct welfare payments, job guarantees or educational provisions for LGBTQI+ Sri Lankans. Such a focus would certainly raise complications for existing advocacy setups, such as the potential need to align or combine advocacy with other disadvantaged social groups. These questions, however, are worth being pondered by advocates and activists, both within and external to the Sri Lankan LGBTQI+ community, particularly because of the roadblocks and lack of relative success current advocacy efforts have been met with.

Accordingly, it may be worthwhile for LGBTQI+ advocates to explore other levels, avenues and issues for advocacy. One of the more notable successes of domestic LGBTQI+ advocacy over the surveyed period, the establishment of the GRC process, came as a result of advocacy at a public institution level, in collaboration with an independent commission, and at a remove from higher level political representatives or public officials (such as Ministers, MPs or Ministerial officials). Similarly, the public commitment of the JVP to LGBTQI+ rights was a result internal advocacy within a political party network, instead of through formal political engagements through Parliament or Ministries. These (relatively) successful efforts warrant consideration of advocacy at lower political levels—for instance, with Departments and Offices, Provincial and local Government bodies and Provincial and local Government representatives; in less public-facing settings—for instance, through intra-political party processes; and with more specific issues that involve less extensive legislative and institutional change to resolve.

Internationally, LGBTQI+ advocacy has been successful in inducing review processes and treaty bodies to increasingly acknowledge LGBTQI+ issues and make supportive recommendations. It has also effected a slight change in Sri Lanka's rhetorical attitude towards the LGBTQI+ community at international fora. However, even this change could be reversed, and it's possible to contemplate a return to the Government posture of 2005-2010 by the current Government. Conversely, the recommendations made by such processes and bodies, and the Government commitments secured already does create a certain institutional resistance to any Government move to assume positions antagonistic towards or completely disregarding of the LGBTQI+ community in Sri Lanka. How much such resistance has been created over the 15 years from 2005 up to 2020 will become clear through the international review process and treaty body engagements ahead.

The status quo raises a number of uncomfortable facts for LGBTQI+ advocates engaging in international advocacy. While they have been successful in getting international review processes and treaty bodies to recognise issues impacting the LGBTQI+ community in Sri Lanka and to induce the Government to make commitments to addressing those issues, this has not translated to much progress on the ground in terms of the Government actually following through on its commitments.

The political will to make the Government enact material changes for the benefit of the LGBTQI+ community also cannot easily be generated out of international processes because Sri Lankan political culture is already constructed to be biased against international fora, and particularly the UN. Recommendations from UN bodies easily fit into and compound the narrative of LGBTQI+ advocacy and LGBTQI+ identities themselves being Western constructs or 'conspiracies'. These narratives are also more favoured by the current Government than the previous one.

This warrants internal reflection on current international advocacy strategies, and on whether they can be sharpened and if the resources being committed to them may be better deployed elsewhere. This must be undertaken in the context of the reflections on domestic advocacy raised earlier, particularly by LGBTQI+ organisations with the capacity to engage in both.

## RESEARCH

Research on LGBTQI+ issues in Sri Lanka from 2005 up to 2020 can be organised under five broad different themes. These themes detail violence and discrimination, legal settings, constructions of identity, HIV-related interventions and LGBTQI+ organisations and activism themselves. This research spans academic research published in domestic and international academic journals; research and advocacy reports published by domestic and international CSOs; and research published by Government departments.

### ***Experiences of Violence and Discrimination***

Violence and discrimination faced by the LGBTQI+ community in Sri Lanka was a significant theme in the research surveyed. A number of research projects were comprised of interviews and surveys with LGBTQI+ community members to discern their experiences with state actors as well as private actors.

Experiences of violence were commonly found to be prevalent where law enforcement agents such as Police were involved. For instance, Human Rights Watch's 2016 report "*All Five Fingers Are Not the Same*" found that such experiences ranged from verbal and physical harassment, arbitrary detention, physical and sexual violence and bribery.<sup>90</sup> The report, based on interviews conducted in four Sri Lankan cities with 61 LGBTI people and 17 Government officials, human rights activists, lawyers, medical professionals, and social services practitioners, underlines how the criminalisation of LGBTQI+ identity also prevents victims from accessing formal justice mechanisms for redress.<sup>91</sup>

A Situational Assessment of transgender Sri Lankans by Damith Chandimal also provides a snapshot of Police harassment and provides situational accounts of sexual coercion and bribery that accompany the violence transgender Sri Lankans face at the hands of Police.<sup>92</sup> The report, based on 22 in depth interviews with transgender persons in two districts, also details at length how victims of violence do not pursue means of redress due to fears of being prosecuted themselves, discouragement by other institutions, and general stigma and shame.<sup>93</sup>

Similarly, "*Not Gonna Take It Lying Down*", published in 2014 by the Women's Support Group, identified commonly experienced types of violence in the public sphere perpetuated by state and non-state actors.<sup>94</sup> Based on 33 qualitative interviews conducted with LBT persons; and an additional 51 qualitative interviews conducted with relevant stakeholders, it also identified violence in the private sphere by family members, particularly forms of emotional violence, as well as intimate partner violence within LBT individuals' relationships, be they heteronormative

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<sup>90</sup> Human Rights Watch, "*All Five Fingers Are Not the Same*" *Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka*, 2016, <https://www.hrw.org/report/2016/08/15/all-five-fingers-are-not-same/discrimination-grounds-gender-identity-and-sexual>

<sup>91</sup> Ibid.

<sup>92</sup> Damith Chandimal, *Analysing the Culture of Transphobia: Situational Assessment on Stigma, Discrimination and Violence faced by Transgender Persons in Sri Lanka*, Colombo: Equal Ground, 2014.

<sup>93</sup> Ibid., pp. 72-74.

<sup>94</sup> Women's Support Group, "*Not Gonna Take It Lying Down*" *Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka*, Colombo: WSG, 2014. The report is part of a wider initiative titled 'the Asia Action Research to Address Violence Against Non-Heteronormative Women and Transgender People on the Basis of their Sexual Orientation, Gender Identity or Gender Expression', a five-country project spearheaded by the International Gay and Lesbian Human Rights Commission (IGLHRC).

or non-heteronormative ones, complicating understandings of the spaces for violence LBT persons are exposed to.<sup>95</sup>

“Dance Ponnaya, Dance!” by Andrea Nichols is based on an inductive analysis of 24 in-depth interviews and three focus groups with male-to-female transgender sex workers in Sri Lanka and examines their mistreatment by Police.<sup>96</sup> Its findings indicate that transgender sex workers experience victimisation by Police simultaneously targeting their feminine gender expression and homosexuality.<sup>97</sup> These abuses include verbal, physical, and sexual abuse as well as inequality in Police responses to both their victimisation and criminality.<sup>98</sup>

This research comes to some common conclusions as to the causes of such harassment and violence LGBTQI individuals experience. The existing criminal law is a major impediment, not only in supporting a culture of persecution by both state and private actors, but also in engendering an atmosphere of silence and shame for victims. Relatedly, the research continuously highlights that violence and harassment are triggered by intolerance of individuals’ actual or perceived sexual orientation and gender identity. Such intolerance results in varied dynamics of victimisation and exploitation depending on the person’s actual gender identity or sexual orientation, the social setting they suffer violence at as well as their relative economic position. Nichols’ “Dance Ponnaya, Dance!” offers that this reflects the ‘intersectional nature of victimisation’ involving sexual orientation and gender.<sup>99</sup>

On a somewhat different plane to direct violence, some research also delved into LGBTQI+ individuals’ experiences of harassment and discrimination and found this to be prevalent in instances where they tried to access basic needs such as healthcare, education, housing and employment. The research reveals patterns of endemic discrimination and harassment LGBTQI+ individuals suffer on account of their gender identities and sexual orientations. For instance, *Analysing the Culture of Transphobia* provides a comprehensive account of discrimination at workplaces and healthcare providers, which leads to transgender persons experiencing disproportionate material deprivation and poor health outcomes.<sup>100</sup>

“*All Five Fingers Are Not the Same*” delves particularly comprehensively into trans individuals’ struggles in obtaining official documents and the unnecessary, invasive documentation and questioning processes, as well as authorities’ arbitrary decision making, which must be endured to get important documents such as the NIC changed.<sup>101</sup> Discrimination against transgender Sri Lankans is also detailed in the Institute for Participatory Interaction in Development’s *Rapid Situation Assessment of Transgender Persons in Sri Lanka* from 2016.<sup>102</sup> Aside from findings on transgender persons’ HIV healthcare knowledge and access, the report also finds in general that transgender Sri Lankans experience very high psychological stress—nearly half have been arrested or detained by the Police; and at least a quarter believed they do not have enough

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<sup>95</sup> Ibid., pp. 20-21.

<sup>96</sup> Andrea Nichols, “Dance ponnaya, dance! Police abuses against transgender sex workers in Sri Lanka”, *Feminist Criminology* 5, no. 2 (2010): pp. 195-222.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid., pp. 215-19.

<sup>99</sup> Ibid.

<sup>100</sup> Chandimal, *Analysing the Culture of Transphobia*, pp. 39-48.

<sup>101</sup> Human Rights Watch, “All Five Fingers Are Not the Same”.

<sup>102</sup> Institute for Participatory Interaction in Development, *Rapid Situation Assessment of Transgender Persons in Sri Lanka*, Colombo: NSACP/FPA, 2016, <https://www.aidsdatahub.org/sites/default/files/publication/Sri Lanka Rapid Situational Assessment of TGs 2017.pdf>

knowledge about legal settings applying to them.<sup>103</sup> The report makes a range of recommendations on establishing accessible, transgender-friendly healthcare facilities.<sup>104</sup>

Stigma indices are attempts at corroborating discrimination suffered by particular populations at a macro level. Stigma indices for PLHIV commissioned by the NSACP in 2010<sup>105</sup> and 2017<sup>106</sup> include men who have sex with men (MSM) as a key population, though they do not interrogate experiences of stigma and discrimination at depth as LGBTQI-specific phenomena. An attempt to develop a stigma index specifically for LGBT individuals was undertaken by Equal Ground in 2012.<sup>107</sup> Using questionnaires directed at 119 LGBT individuals, the report found that up to three quarters of LGBT people have faced discrimination in the forms of physical, emotional, verbal and psychological abuse in a range of social settings.<sup>108</sup> Relatedly, LGBT-related stigma is also deeply internalised by LGBT Sri Lankans, governed either by stigma or shame stemming from discrimination they have faced or fears associated with their sexual orientations and gender identities.<sup>109</sup>

H.U.S. Samaraweera and B.G.I.M. Samarasinghe frame the discrimination suffered by LGT Sri Lankans as a product of Sri Lankan society's normatively heterosexual culture.<sup>110</sup> Their paper's purposive sampling of 40 lesbian, gay, transgender and sex worker Sri Lankans finds that different dynamics of discrimination affect different identities; social discrimination being prevalent for lesbian and gay individuals as compared to social exclusion for transgender and sex worker individuals.<sup>111</sup> Similarly, D.M. Liyanage and A.S. Adikaram find discrimination to be rife in workplaces in Sri Lanka.<sup>112</sup> Their in-depth in-person interviews with 16 gay male employees elaborates on harassment through ostracism, rejection, offensive comments, sexual innuendos, frequent jokes and name calling, sexual assault spreading rumours, unwanted touching and threats or bribes in exchange of sexual favours. The paper classes this as heterosexist harassment stemming from institutionalised heteronormativity in workplaces.<sup>113</sup> A concordant study by the same authors explores how gay employees cope with this heterosexist harassment at work.<sup>114</sup> It finds that the coping strategies of gay employees in the face of harassment are entwined with labelling and stigma leading to diverse and complex coping

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<sup>103</sup> Ibid., pp. 34-50.

<sup>104</sup> Ibid., p. 55.

<sup>105</sup> NSACP, UNAIDS, Family Planning Association Sri Lanka et al, *People Living With HIV Stigma Index Sri Lanka*, Colombo: NSACP, 2010, [https://www.aidsdatahub.org/sites/default/files/documents/UNAIDS\\_Family\\_Planning\\_Association\\_Sri\\_Lanka\\_and\\_Partners\\_\(2010\)\\_People\\_Living\\_with\\_HIV\\_Stigma\\_Index\\_Sri\\_Lanka.pdf](https://www.aidsdatahub.org/sites/default/files/documents/UNAIDS_Family_Planning_Association_Sri_Lanka_and_Partners_(2010)_People_Living_with_HIV_Stigma_Index_Sri_Lanka.pdf)

<sup>106</sup> J. Vidanapathirana, B. Senanayake, N. Wijegoonewardene & M. Fernando, *Stigma Assessment of People living with HIV in Sri Lanka*, Colombo: NSACP, 2017, [https://www.aidsdatahub.org/sites/default/files/publication/Sri\\_Lanka\\_Stigma\\_Assesment\\_of\\_PLHIV\\_2017.pdf](https://www.aidsdatahub.org/sites/default/files/publication/Sri_Lanka_Stigma_Assesment_of_PLHIV_2017.pdf)

<sup>107</sup> Equal Ground, *Towards a Lesbians, Gays, Bisexuals, Transsexuals and Transgendered (LGBT) Stigma and Discrimination Index for Sri Lanka*, Colombo: Equal Ground, 2012, <https://equalgroundsrilanka.blog/wp-content/uploads/2017/12/The-LGBT-Stigma-and-Discrimination-Index-of-Sri-Lanka-A-project-of-EQUAL-GROUND.pdf>

<sup>108</sup> Ibid., pp. 102-3.

<sup>109</sup> Ibid., p. 104.

<sup>110</sup> H.U.S. Samaraweera and B.G.I.M. Samarasinghe, "Sexuality as a Taboo: Social Discrimination Against LGT Identities and Sex Workers in Urban Sri Lanka", *Proceedings of 9<sup>th</sup> International Research Conference*, Ratmalana: Kotelawala Defence University (2016): pp. 50-54.

<sup>111</sup> Ibid., p. 53.

<sup>112</sup> D.M. Liyanage and A.S. Adikaram, "Gays' Experiences of Harassments in Heteronormative Workplaces in Sri Lanka", Colombo: Faculty of Management and Finance, University of Colombo, 2017.

<sup>113</sup> Ibid.

<sup>114</sup> M. Liyanage and A.S. Adikaram, "Accepting or rejecting the label: how gay employees cope with harassment at work", *Gender in Management*, Vol. 34 No. 8, (2019): pp. 644-64.

strategies which depended on whether individuals accepted labels of deviance and stigma and whether they were open about their sexuality.<sup>115</sup>

Several pieces of research captured these dynamics of discrimination in the media context. A UNDP study exploring print media's role in reflecting and perpetuating stigma and discrimination against key affected populations found that coverage of PLHIV, MSM and transgender persons was relatively low (at 5%, 1.7% and 0.5% respectively) compared to other key populations.<sup>116</sup> Nonetheless, they were still embedded in negative 'Grand Narratives' which perpetuate stigma, such as notions that homosexuality and transsexuality are dangerous; threaten Sri Lanka's long-standing Buddhist culture; represent a 'pariah' and perverted Western culture; and are a mask for paedophilia.<sup>117</sup> Some of the media dynamics which perpetuate stigma for transgender Sri Lankans specifically are also captured by *Analysing the Culture of Transphobia*, particularly within popular culture media.<sup>118</sup>

### **Legal Settings**

While examining the effects of discriminatory legal provisions (and particularly the criminal provisions) was widespread across the research, a particular strand of research centred on analysing these legal provisions themselves, and assessing possibilities of legal change.

Aritha Wickramasinghe examines criminalising legal provisions against emerging case law, international law and Government statements at international fora and argues that an implicit right to privacy and non-discrimination of LGBTIQ+ individuals now exists in Sri Lanka, and accordingly that consensual same-sex sexual conduct has been implicitly decriminalised.<sup>119</sup> This finding aligns with A.H. Wijayath's review of criminal provisions relating to LGBTIQ+ identity which contextualises contemporary positive legal developments such as the *Wimalasiri* judgment and the GRC process within the wider framework of institutionalised legal discrimination.<sup>120</sup>

Priya Thangarajah assesses the situation with regards to the law and its impact on LGBT persons using 109 interviews conducted nationwide with Police, lawyers, medical practitioners, LGBT community members, human rights organisations and activists.<sup>121</sup> While exploring the lived experiences of LGBT persons under these laws, the report also critiques authorities' insistence on sections 365 and 365A as protections against child abuse, and explores legal provisions that can be used positively against convictions.<sup>122</sup> It also gauges the opinions of lawyers with a view towards creating a network of lawyers sensitive to LGBT issues. In same vein, Chandimal's *Analysing the Culture of Transphobia* surveys lawyers who insist that transgender Sri Lankans should mobilise more strongly while being cognisant of the intra-

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<sup>115</sup> Ibid., pp. 657-63

<sup>116</sup> N. Sarma and H. Billimoria, *Stigma, Discrimination and Key Affected Populations: Strengthening the Role of Media Advocacy in Sri Lanka through a Critical Analysis of News Media Coverage*. Bangkok: UNDP, 2013, p. 6.

<sup>117</sup> Ibid., p. 7.

<sup>118</sup> Chandimal, *Analysing the Culture of Transphobia*, pp. 59-60.

<sup>119</sup> Aritha Wickramasinghe, "Homosexuality and the Law", *Colombo Law College Review* (2017): pp. 115-124.

<sup>120</sup> A.H. Wijayath "Sexual Diversity and Gender Identity in Sri Lankan Perspective with Special Reference to Rights and Position of Sexual Minorities in Criminal Justice System of Sri Lanka", *Proceedings of the 4<sup>th</sup> World Conference on Women's Studies*, Vol. 3, Issue 1, 2018, pp. 53-63

<sup>121</sup> Priya Thangarajah, *Strengthening of Legal Protection for LGBT in Sri Lanka: Road to Decriminalization*, Colombo: Equal Ground, 2013.

<sup>122</sup> Ibid., pp. 18-22.



community barriers to this as well as the protracted difficulties in pursuing legal actions such as Fundamental Rights petitions at the Supreme Court.<sup>123</sup>

Urmila Pullat explores how the law can accommodate what it means to be transgender in Sri Lanka using two semi-structured interviews and three focus group discussions with transgender persons in Colombo.<sup>124</sup> The variance in trans identities she finds leads her to conclude that a law modelled on the Argentinian Gender Identity law would work best given the low administrative barriers to legal recognition of gender it facilitates; its non-reliance on gender reassignment surgery and psychiatric interventions; and its wide, non-binarised conception of gender.<sup>125</sup>

The legal state of affairs in Sri Lanka vis-à-vis the UK is very substantively appraised by Dinusha Panditaratne who explores why former British colonies in Asia have resisted calls to decriminalise same sex relations and what prospects exist for reform.<sup>126</sup> Panditaratne finds that recent trends, especially in the West, do not predict decriminalisation in South and Southeast Asia and indeed, may make it more difficult to achieve.<sup>127</sup> She concludes that Western Governments should avoid 'heavy-handed demands' for decriminalisation because this feeds a mistaken and counter-productive view of Western 'ownership' of LGBTIQ+ rights.<sup>128</sup> Panditaratna, like Chandimal above, also confronts preventing child abuse as a justification for criminalisation.<sup>129</sup> As factors maintaining criminalisation, she places it alongside the misleading assumption that criminalisation is 'unenforced'; assertions of 'cultural' and 'moral' independence from the West; public discourse and legal frameworks focused on ethno religious divisions over gender inequities; and strong extended family networks and multigenerational households.<sup>130</sup> M.A.N. Chandratilaka and P. Mahanamahewa also conduct a comparative legal study in "Sexual Orientation and Human Rights; Applicable Laws of Sri Lanka and UK" to trace the UK's history of criminalising LGBTIQ+ identity to decriminalising it and where that leaves Sri Lanka having inherited the criminalisation.<sup>131</sup>

A legal brief by Kamani Jinadasa examines Sri Lanka's legal settings that apply to LGBTIQ+ individuals relative to Government HIV prevention strategies.<sup>132</sup> It finds that there is a pressing need to provide legal support to PLHIV and LGBTI populations in order to increase their ability to access basic services and to reduce the stigma levels that they face in the absence of protective legislation. Jinadasa concludes that it is important to file cases to establish precedents which entrench the rights of PLHIV, LGBTI populations and key affected populations.<sup>133</sup> Within the institutional realm, a 2013 UNDP-IDLO report undertook an assessment of the capacity of the HRCSL to address human rights in relation to sexual

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<sup>123</sup> Chandimal, *Analysing the Culture of Transphobia*, pp. 69, 77.

<sup>124</sup> Pullat, Urmila, "Transgendered in Sri Lanka: Gender Identity and the Law in Sri Lanka and India", SSRN 2425503 (2012).

<sup>125</sup> *Ibid.*, pp. 15-23.

<sup>126</sup> Dinusha Panditaratne, "Decriminalizing Same Sex Relations In Asia: Socio-Cultural Factors Impeding Legal Reform", *American University International Law Review* 31, (2016): pp. 171-207.

<sup>127</sup> *Ibid.*, p. 173.

<sup>128</sup> *Ibid.*, pp. 205-7.

<sup>129</sup> *Ibid.*, pp. 190-92.

<sup>130</sup> *Ibid.*, pp. 186-89, 193-204.

<sup>131</sup> M.A.N. Chandratilaka and P. Mahanamahewa, "Sexual Orientation and Human Rights; Applicable Laws of Sri Lanka and UK", *Proceedings of 8<sup>th</sup> International Research Conference*, Ratmalana: Kotelawala Defence University (2015): pp. 110-14.

<sup>132</sup> Kamani Jinadasa, "Protective Laws related to HIV, men who have sex with men and transgender people", Bangkok: UNDP/International Development Law Organization, 2011.

<sup>133</sup> *Ibid.*, p. 7.

orientation, gender identity and HIV.<sup>134</sup> Through informal interviews, the report found a significant lack of awareness, understanding and capacity about sexual orientation and gender identity amongst HRCSL staff (this state of affairs has changed significantly since then, particularly upon the HRCSL's reconstitution as an independent commission in 2015).<sup>135</sup>

### ***Constructions of Identity***

LGBTQI+ research in Sri Lanka grapples with identity through a number of approaches, of which sociological and clinical approaches were the most prevalent.

*Montage of Sexuality in Sri Lanka* published by the College of Community Physicians of Sri Lanka and the UN Population Fund in 2018 compiles a series of personal narratives of sexual identity which include several by LGBTQI+ individuals.<sup>136</sup> These narratives explore how LGBTQI+ individuals navigate their identities and relationships and paint a diverse picture how gender identities and sexual orientations are negotiated within Sri Lanka's repressive, heteronormative society.<sup>137</sup>

Another contemporary overview of identity construction is offered by *Disrupting the Binary Code*, a comprehensive study published by the Women and Media Collective which explores LGBTQ individuals' use of online spaces.<sup>138</sup> It found that the internet is extremely important to LGBTQ Sri Lankans as it facilitates relationships not possible offline; provides opportunities for self-expression and participation in public discourse; allows access to a global body of queer art; while at the same time individualising the community and adversely impacting community organising and mobilisation.<sup>139</sup> The specialised dynamics the study highlights—including not publicly sharing gender identities and sexual orientations; the use of multiple accounts; widespread use of anonymous or pseudonymous profiles; and leverage of online spaces for sexual encounters—are also picked up in some of the personal narratives of sexual identity recounted in the *Montage of Sexuality in Sri Lanka*.<sup>140</sup>

Anee Bhattacharyya and Kerl Fernando's comparative study of India and Sri Lanka and how identity politics engages with the question of sexuality argues that patriarchal and heteronormative state institutions have shaped and constrained discourses on sexuality and maintained hetero patriarchy.<sup>141</sup> The authors particularly underscore how politics of sexuality which are fluid and particular are confined adversely by rigid, normative understandings of sexuality, as prevalent in Sri Lanka.<sup>142</sup> An example of identity exploration within this framework is Shermal Wijewardene's exploration of the self-perceptions of gender identity of two trans individuals from lower-middle-class village environments which finds that the subjects are continuously thrown back on their own imaginative resources to frame their gender

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<sup>134</sup> Ayesha Mago, *Human Rights Commission of Sri Lanka: Report to the Regional National Human Rights Institutions Project on Inclusion, the Right to Health and Sexual Orientation and Gender Identity*, Bangkok: UNDP/International Development Law Organization, 2013.

<sup>135</sup> *Ibid.*, pp. 6-7.

<sup>136</sup> Santhushya Fernando, Senel Wanniarachchi & Janaki Vidanapathiran, *Montage of Sexuality in Sri Lanka*, College of Community Physicians of Sri Lanka and the UN Population Fund, Colombo: College of Community Physicians of Sri Lanka, 2018.

<sup>137</sup> *Ibid.*, see: pp. 23-47, 64-66.

<sup>138</sup> Paba Deshapriya, Michael Mendis, Shermal Wijewardena & Subha Wijesiriwardena, *Disrupting the Binary Code: Experiences of LGBT Sri Lankan's Online*, Colombo: Women and Media Collective, 2017.

<sup>139</sup> *Ibid.*, pp. 29-64, 102-104.

<sup>140</sup> Fernando, Wanniarachchi & Vidanapathiran, *Montage of Sexuality in Sri Lanka*, pp. 64-68.

<sup>141</sup> Anee Bhattacharyya & Kerl Fernando, "Queer Activism and Identity of Sexual Minorities: A Situation Analysis of India and Sri Lanka", *Proceedings of 9<sup>th</sup> International Research Conference*, Ratmalana: Kotelawala Defence University (2016): pp. 55-62.

<sup>142</sup> *Ibid.*, p. 62.

difference.<sup>143</sup> Wijewardene argues that self-perceptions have served as the only resource in their lives to represent themselves with dignity in a society violently intolerant of gender diversity.<sup>144</sup> These findings also suggest that notions of gender identity are understood and practiced differently by particular and localised subjects to how they might be articulated in general (and Western) contexts.

In similar vein, Jayanthi Kuru-Utumpala investigates and interrogates the concept of female masculinity in relation to a sample of 12 gender non-conforming lesbians in Sri Lanka.<sup>145</sup> Using social constructivist and postmodernist approaches, she argues that the concept of female masculinity allows masculine women to dislodge men and maleness from masculinity.<sup>146</sup> Nonetheless, she argues that terms such as ‘gender disruptions’ or ‘gender rejections’ may be more empowering descriptors of gender non-conforming lesbians as they refuse the typical view of gender non-conforming lesbians as masculine, instead breaking and moving beyond normative, binarised codes of gender.<sup>147</sup>

Andrew Nichols supplements her research in “Dance, ponnaya, dance!” alongside Jody Miller by investigating the complex and contradictory ways in which gender identity, sexuality, and desire are configured by nachchi persons.<sup>148</sup> The paper examines how they compare and distinguish themselves from cisgender heterosexual women and cisgender homosexual men as they evidently celebrate their feminine gendered subjectivity, but also embrace key facets of their biological ‘maleness’ and are ardent in their sexual desire for men. These arguments are particularly contextualised through transactional sexual exchanges, where complex dynamics of economics, desire, stigma and exploitation are found to shape nachchi experiences.<sup>149</sup>

Themal Ellawala’s “Mismatched Lovers” is a similar study of subjective identity construction.<sup>150</sup> It explores how sexual and gender identity development theories in both psychology and sociology fit with the experiences of non-heterosexual and transgender individuals in Sri Lanka. Through a qualitative study 15 participants, the paper finds that participants articulated gender and sexual self-conceptions significantly incongruent with major identity development theories.<sup>151</sup> This leads to it stressing the necessity of considering individual differences and cultural contexts when studying gender and sexuality, and warning of the dangers of universalising theories across cultural differences.<sup>152</sup> In this sense, Ellawala echoes the disjunctures identified by Wijewardene, Kuru-Utumpala and Nichols and Miller between Western ontologies of identity and local understandings and practices of gender and sexuality.

Clinical approaches to LGBTQI+ identity more straightforwardly use psychological assessments as well as social and healthcare evaluations. The resulting reviews are less theoretical and more

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<sup>143</sup> Shermal Wijewardene, “But no one has explained to me who I am now ...”: “Trans” Self-Perceptions in Sri Lanka” in Wieringa S.E., Blackwood E., Bhaiya A. (eds) *Women’s Sexualities and Masculinities in a Globalizing Asia. Comparative Feminist Studies Series*, pp. 101-116, New York: Palgrave Macmillan, 2007.

<sup>144</sup> *Ibid.*, pp. 101-102

<sup>145</sup> Jayanthi Kuru-Utumpala, “Butching it up: an analysis of same-sex female masculinity in Sri Lanka”, *Culture, Health & Sexuality*, 15:sup2, pp. S153-S165.

<sup>146</sup> *Ibid.*, p. S163.

<sup>147</sup> *Ibid.*

<sup>148</sup> Jody Miller & Andrea Nichols, “Identity, sexuality and commercial sex among Sri Lankan nachchi”, *Sexualities* 15, no. 5/6 (2012): pp. 554-69.

<sup>149</sup> *Ibid.*, pp. 561-66.

<sup>150</sup> Themal Ellawala “Mismatched Lovers: Exploring the Compatibility Between LGBTQI+ Identity Theories and Gender and Sexual Plurality in Sri Lanka”, *Sexuality & Culture* 22(2018): pp. 1321-39.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.*, pp. 1334-36.

practical. For instance, A.S. Malalagama constructs gender non-conforming identities in Sri Lanka by looking at discrimination, the sex industry, sexual health settings and local and international developments.<sup>153</sup> She concludes that the College of Sexual Health and HIV Medicine and the Sri Lanka College of Psychiatrists in particular have the capacity to collaborate with and study the gender non-conforming population to help them overcome oppression imposed by cis-heteronormative society.<sup>154</sup> Similar advocacy of psychiatrists and other health professionals needing to intervene in the policy and political spheres in order to address the mental health outcomes of LGBTQI+ individuals is found in Miyuru Chandradasa's "Suicidal ideation in gay adolescents".<sup>155</sup>

Likewise, in "An update on transsexuality", Malalagama alongside S. Ginige goes on to compose an overview of transgender persons' experiences of gender dysphoria and social discrimination, and their 'elevated prevalence' of co-morbid psychopathology, especially depression, anxiety disorders and suicidality.<sup>156</sup> The authors use this to advocate a multi-sectoral approach for managing gender dysphoria, which requires collaboration between psychiatrists, endocrinologists, gynaecologists, plastic surgeons, counsellors, social workers, lawyers, committed NGOs, transgender individuals and their families.<sup>157</sup>

The two authors, alongside P.D.L.R. Wijesinghe and N. Gunewardena, go on to make just such a contribution through a study of the epidemiological characteristics and management of transsexual clinic attendees at a tertiary care clinic setting, in order to address the gap of no published data on epidemiological factors associated with the transgender population in Sri Lanka.<sup>158</sup> The study reviews clinical records of all transsexual persons registered at the weekly adult psychiatry clinic and sexual disorders clinic of Teaching Hospital Peradeniya from 1985 to 2018. The study finds an increasing number of transgender persons seeking psychiatric help but also major gaps in service provision available to them.<sup>159</sup> Alongside recommending attitudinal change in relevant professional groups and public education, the paper makes the specific recommendation of creating National Good Practice guidelines for Sri Lanka with the participation of representatives of all stakeholders in transgender healthcare.<sup>160</sup>

### ***HIV-Related Interventions***

Research as part of healthcare interventions for HIV prevention and treatment forms a substantial body of research during the surveyed period. Among research explicitly identifying LGBTQI+ populations, one of the earliest interventions is a 2007 report on gay and MSMs' HIV knowledge and sexual behaviours by Companions on a Journey.<sup>161</sup> Based on surveys of 494 men in five cities, the report makes the important observation for the time that MSM 'live and work

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<sup>153</sup> A.S. Malalagama, "The shifting landscape of Gender Identity and the situation in Sri Lanka", *Sri Lanka Journal of Sexual Health and HIV Medicine*, Volume 3, (2017): pp. 45-50.

<sup>154</sup> *Ibid.*, p. 50.

<sup>155</sup> Miyuru Chandradasa, "Suicidal ideation in gay adolescents in the context of cultural stigma and criminalized homosexuality in Sri Lanka", *International Journal of Social Psychiatry* (2018): pp. 1-2.

<sup>156</sup> P. Ginige & A.S. Malalagama, "An update on transsexuality", *Sri Lanka Journal of Psychiatry* 9, no. 2 (2018): pp. 4-9.

<sup>157</sup> *Ibid.*, p. 9.

<sup>158</sup> P. Ginige, A.S. Malalagama, P.D.L.R. Wijesinghe & N. Gunawardena, "Transsexualism; A Sri Lankan experience: A descriptive study of epidemiological characteristics and management issues of transsexuals (TXLs) from a tertiary care clinic setting in Sri Lanka", *Sri Lanka Journal of Sexual Health and HIV Medicine*, Volume 4, (2018): pp. 18-23.

<sup>159</sup> *Ibid.*

<sup>160</sup> *Ibid.*, pp. 22-23.

<sup>161</sup> Companions on a Journey, *Knowledge, Attitude and Practice in the Gay Community, Gay Identified Men, and Men Who Have Sex with Men in Sri Lanka*, Colombo: Companions on a Journey, 2007, [https://www.aidscontrol.gov.lk/images/pdfs/publications/research\\_documents/cojk\\_knowledge.pdf](https://www.aidscontrol.gov.lk/images/pdfs/publications/research_documents/cojk_knowledge.pdf)

in all sections of Sri Lankan society and are not limited to tourist areas or Colombo-based English speaking elites'.<sup>162</sup> It also contends that they 'engage in a range of sexual behaviours with varying HIV-risk and possess multiple sexual identities; a long way from the stereotypes of effeminized men having receptive anal sex'.<sup>163</sup> The report's express focus on gay men and MSM allows it to discern that many MSM also have sex with women and do not socially or politically identify as gay, which it sees as presenting a significant challenge to developing targeted HIV prevention strategies.<sup>164</sup>

A particularly unique research intervention is made in a survey by the International Centre for Ethnic Studies which focuses on the military as a vulnerable group in terms of HIV/AIDS and assesses the HIV/AIDS knowledge of Sri Lankan military personnel and the extent to which they engaged in risky sexual behaviours.<sup>165</sup> The report includes a specific section on 'homosexual history and behaviour' which details findings including nearly a third (30.8%) reporting they have had homosexual relationships.<sup>166</sup>

The first behavioural surveillance survey on HIV conducted in Sri Lanka, from 2006-2007, while not explicitly aimed at capturing an LGBT population, nonetheless included MSM and beach boys as key affected populations.<sup>167</sup> The survey made a number of findings about the sexual behaviours as well as the geographical positioning of these populations.<sup>168</sup> Subsequent to this survey, the NSCAP initiated a series of robust mapping exercises in 2010,<sup>169</sup> 2013,<sup>170</sup> and 2018.<sup>171</sup> The 2010 exercise included as key populations MSM (including gay men, male sex workers and nachchi persons); the 2013 exercise included MSM and beach boys (who may be homosexual, heterosexual or bisexual); and the 2018 exercise included MSM, beach boys and trans women.

The 2010 exercise used spot interviews within Ministry of Health-designated geographic zones in Colombo and Anuradhapura to produce district-wide estimates. The 2013 and 2018 exercises used divisional secretariats as unit areas for geographical mapping and sampled spot interviews within 303 and 49 respectively to make extrapolations at the district, provincial and national levels.

The 2010 report estimated 9,569 MSM in the Colombo and Anuradhapura districts.<sup>172</sup> The 2013 report extrapolated that there are 7,551 MSM and 873 beach boys nationwide; while the 2018 report extrapolated there to be 40,000 MSM, 4,500 beach boys and 2,200 trans women

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<sup>162</sup> Ibid., p. 24.

<sup>163</sup> Ibid.

<sup>164</sup> Ibid.

<sup>165</sup> International Centre for Ethnic Studies (ICES), *A Survey of HIV/AIDS Awareness and Risky Sexual Behaviour in a Vulnerable Population in Sri Lanka*, Kandy: ICES, 2009.

<sup>166</sup> Ibid., pp. 27-8.

<sup>167</sup> P. Rawstorne & H. Worth, *Sri Lanka Behavioural Surveillance Survey: First Round Survey Results 2006-2007*, Colombo: Ministry of Healthcare and Nutrition, 2007.

<sup>168</sup> Ibid.

<sup>169</sup> National STD/AIDS Control Programme (NSCAP), *Mapping Key Populations for HIV Prevention in Sri Lanka*, Colombo: NSCAP, 2010, [https://www.aidscontrol.gov.lk/images/pdfs/publications/research\\_documents/hrd\\_mapping.pdf](https://www.aidscontrol.gov.lk/images/pdfs/publications/research_documents/hrd_mapping.pdf)

<sup>170</sup> NSCAP, *National Size Estimation of Most at Risk Populations (MARPs) for HIV in Sri Lanka*, Colombo: NSCAP, 2013, [https://www.aidscontrol.gov.lk/images/pdfs/publications/research\\_documents/national\\_size\\_estimation\\_2013.pdf](https://www.aidscontrol.gov.lk/images/pdfs/publications/research_documents/national_size_estimation_2013.pdf)

<sup>171</sup> NSCAP, *Report on the National Size Estimation of the Most at Risk Populations for HIV in Sri Lanka*, Colombo: NSCAP, 2018, [https://www.aidscontrol.gov.lk/images/pdfs/publications/research\\_documents/Final-draft-report-Key-Population-Size-Estimation--2018July.pdf](https://www.aidscontrol.gov.lk/images/pdfs/publications/research_documents/Final-draft-report-Key-Population-Size-Estimation--2018July.pdf)

<sup>172</sup> NSCAP, 2010 Report, p. 10.

nationwide. Findings from the 2018 study about trans women are also expressed in the article “Estimating the population size of female sex workers and transgender women in Sri Lanka”.<sup>173</sup>

The findings of these mapping exercises are complicated by the reliability of the multipliers used and the mobility of participants, which are based on existing data points gathered from NGOs.<sup>174</sup> The studies acknowledge that their methodology could underestimate hidden populations.<sup>175</sup> All three exercises stress the need to repeat these mapping exercise in conjunction with general population-based surveys in order to refine the data points and arrive at more accurate estimations.<sup>176</sup> The consistent repetition of the mapping and the gradual refinement of the methodology indicates that this was achieved, with an important expansion of key populations to include more LGBTQI+ segments.

An exercise explicitly aimed at mapping LGBT populations was conducted by Equal Ground in 2017.<sup>177</sup> It surveyed 470 adults in the Colombo, Kandy, Matara and Nuwara Eliya districts to estimate that approximately 19.6% (753,973) of the adults living those districts are lesbian, gay, bisexual and/or transgender.<sup>178</sup> The exercise additionally concludes that a vast majority of LGBT individuals have faced some form of challenge or barrier because of their sexual orientation and gender identity.<sup>179</sup>

### **NGOs, Activists and Activism**

Surveyed research also touches on the dynamics of LGBTQI+ NGOs and activism and the institutional politics of the queer movement. Themal Ellawala interrogates how LGBT NGOs attempt to balance globalised activist demands with local political dynamics, focusing particularly on the activism of Equal Ground.<sup>180</sup> Using interviews and informal conversations, he details how the organisation performs statist discourses of ethno-nationalism and class exclusion when encountering the (heteronormative) Sri Lankan state, and reproduces Western typologies of queer identity and identities when encountering Western donors.<sup>181</sup> This is said to result in structural violence being enacted on local queer subjects who become collateral damage in these exchanges.<sup>182</sup>

A study by Joshua Artega Gonzalez uses social movement theory and postcolonial theory to answer how the politics of the LGBTQ movement is expressed in postcolonial Sri Lanka.<sup>183</sup> It finds that the movement’s ‘grievances’ are connected to the country’s colonial history and to human rights discourse.<sup>184</sup> Gonzalez also deems ‘identity’ to be ‘hybrid’ between the Western concept of “LGBTQ” and what it means to be an “LGBTQ Sri Lankan”, and expresses discomfort

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<sup>173</sup> I. Bozicevic, A. Manathunge A, Z. Dominkovic, S. Beneragama & K. Kriitmaa, “Estimating the population size of female sex workers and transgender women in Sri Lanka”, *PLoS ONE* 15(1), (2020).

<sup>174</sup> NSCAP, 2018 *Report*, pp. 71-2.

<sup>175</sup> Bozicevic et al, “Estimating the population size”, p. 8.

<sup>176</sup> *Ibid.*, pp. 8-9; National STD/AIDS Control Programme, 2013 *Report on the National Size Estimation*, pp. 85-93; National STD/AIDS Control Programme, 2018 *Report on the National Size Estimation*, pp. 71-2.

<sup>177</sup> Kemone Brown, *Mapping LGBT in Colombo, Kandy, Matara and Nuwara Eliya*, Equal Ground, Colombo: Equal Ground, 2017.

<sup>178</sup> *Ibid.*

<sup>179</sup> *Ibid.*, pp. 30-31.

<sup>180</sup> Themal Ellawala, “Legitimizing Violences: The ‘Gay Rights’ NGO and the Disciplining of the Sri Lankan Queer Figure”, *Journal of South Asian Development* 14, no. 1 (2019): pp. 83-107.

<sup>181</sup> *Ibid.*, pp. 90-101.

<sup>182</sup> *Ibid.*, p. 84.

<sup>183</sup> Joshua Artega Gonzalez, *Repainting The Rainbow: A Postcolonial Analysis on the Politics of the LGBTQ Movement in Colombo, Sri Lanka*, Master’s Thesis, Lund University, 2019.

<sup>184</sup> *Ibid.* pp. 31-34.

about the essentialism of the former.<sup>185</sup> The study also raises activists' concerns about local activist strategies mimicking Western assimilationist trajectories.<sup>186</sup>

Activist concerns are also relayed in a study of LGBTQI+ activists carried out by Bakamoono, which in addition to echoing familiar concerns about discrimination and criminalisation, also revealed numerous disparities in terms of age, location and political outlook between activists and activist organisations.<sup>187</sup> The study also uncovers differing levels of comfort activists have about these disparities themselves, with some desirous of a unified front for activism and others more comfortable with differences which they see as natural.

## Reflections on LGBTQI+ Research

Research on LGBTQI+ issues in Sri Lanka is in general not voluminous, although from the research surveyed by this paper, it may be concluded that much research was added to this volume in the 15 years from 2005 up to 2020. Further research on any LGBTQI+ issue or topic is to be wholly welcomed to broaden its size and scope.

On a very general level, any research focused specifically on segments of the LGBTQI+ community that are particularly or relatively under-examined would be special value. There is a complete lack of research on intersex Sri Lankans, whilst lesbian and bisexual Sri Lankans are also relatively under-examined. Likewise, while existing research does not ignore transgender Sri Lankans entirely, 'transgender' is a particularly broad category in Sri Lanka under which certain identities, such as nachichi individuals, are not as, or not always, captured.

At a broad level, too, efforts should be made to better capture other demographic segments under-sampled by current research. This includes persons who are Tamil, Muslim or of other minority ethnicities; of suburban and rural origins; have disabilities; and are significantly younger or older than current sample sizes.<sup>188</sup> This would necessitate much more considered decisions being made during research design and resourcing, particularly with regards to language use.

Within the themes identified by this paper specifically, it is possible to make certain suggestions on future research directions. On experiences of violence and discrimination, research that attempts to move beyond broad-strokes accounts across multiple settings would be desirous. This would entail focusing on specific segments of the community as well as specific settings of discrimination, such as housing, education, or employment. In such research, efforts should be made to capture the perspectives not just of LGBTQI+ individuals as the victims of discrimination but of state and private actors as perpetrators of discrimination. For instance, research on housing discrimination could capture not just LGBTQI+ individuals who have suffered discrimination, but also state housing authorities, property agents and landlords.

On legal settings, much of the existing research is necessarily focused on the criminalisation provisions in domestic and comparative focus. Yet the Sri Lankan legal apparatus enforces discrimination against LGBTQI+ individuals in almost every single facet of life. Research that looks at the varied experiences of LGBTQI+ individuals in particular social settings and spheres

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<sup>185</sup> Ibid. pp. 35-38.

<sup>186</sup> Ibid. pp. 38-45.

<sup>187</sup> Bakamoono, *A review of recommendations made with regards to people of diverse sexual orientation and gender identity in Sri Lanka 2010-2017*, 2018 <http://www.bakamoono.lk/admin/wp-content/uploads/2016/06/Review-of-recommendations.pdf>

<sup>188</sup> Which generally capture persons who are 18-49 years old.

should pay attention to the multiple laws and policies that govern such settings and how they could always impact LGBTQI+ individuals differentially, by design or not.

Questions of identity construction raise myriad possibilities of research. Interrogations of the identities of under-explored segments of the community would certainly make this research richer. A persistent theme across the research on identity this paper covered was the incongruences between Western ontological categories of queer identity and local understandings and practices of queerness. There is rich terrain to be explored at these fractures; for instance, about men who have sex with men but do not identify as gay, or nachchi individuals.

LGBTQI+ activism in Sri Lanka is still relatively fledgling, and as such, interrogations of organisations and activists, both old and new, can help create better understandings of it. This activism is also placed precariously between repressive state and social norms and Western ideological and funding paradigms. There is much here to be explored in terms of how LGBTQI+ organisations interact with state actors, domestic non-state actors and international actors, as well as, of course, each other. Critical frameworks that go beyond simply human rights-centric approaches to interrogating LGBTQI+ activism—such as those which seek to uncover underlying economic dynamics, or historical and contemporary (neo)colonial relations—can add much depth to such research.

In terms of research areas this paper did not uncover, LGBTQI-focused art—be it literature, film, theatre or visual and performance art—warrants definite collation, critique and analysis. While this should certainly capture the small but growing body of work focused primarily on LGBTQI+ themes and characters, it should also survey LGBTQI+ representations within wider cultural products. Likewise, a notable paucity of LGBTQI-focused research in Sri Lanka is found within historical research. There is much to be uncovered, evaluated and analysed about queer figures and themes from Sri Lanka's past, be it from its ancient, colonial or modern histories, which are often acknowledged but rarely corroborated in depth. Such research could certainly help LGBTQI+ Sri Lankans see and articulate themselves more strongly as part of Sri Lankan society, both culturally and politically.



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