



EQUAL GROUND is a non profit organization seeking political and human rights for Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning (LGBTIQ) individuals in Sri Lanka.

Recalling that all human beings are born free and equal in dignity and rights and that all human beings are entitled to the enjoyment of human rights without distinction of any kind, and that states have a duty to respect, protect and fulfill these rights, EQUAL GROUND is greatly worried and disturbed by the wide-spread human rights violations that LGBTIQ persons are currently facing in Sri Lanka. This paper summarizes some of the major challenges that the LGBTIQ community of Sri Lanka is currently facing in relation to their human rights. These include, but are not limited to, the criminalization of sexual activity between adult persons of the same sex, state sanctioned hate speech on the basis of sexual orientation, use of the legal system to harass human rights defenders working for LGBTIQ rights, impunity for crimes committed against LGBTIQ people, violence, death threats and extrajudicial killings based on sexual orientation, marginalization and wide-spread persecution of LGBTIQ individuals. Sri Lanka has ratified several key human rights conventions and has important human rights obligations under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, The Convention on the Rights of the Child and the Universal Declaration of Human Rights.<sup>1</sup> As the Yogyakarta Principles observe, all persons, regardless of their sexual orientation or gender identity, are entitled to the full enjoyment of all human rights.<sup>2</sup> In spite of the rights obligations that the Sri Lankan state is bound by, LGBTIQ persons in Sri Lanka are currently facing systematic stigma and discrimination due to their sexual orientation and/or gender identity and state actors often ignore or fuel the discrimination and abuse of LGBTIQ individuals. As such the Sri Lankan state often fails to respect, protect and/or fulfill the human rights of the LGBTIQ individuals in the country.

### **Criminalization or same sex sexual behavior:**

The national legislation of Sri Lanka still regards sexual activity between two consenting adults of the same sex as a crime. Sri Lanka's Penal Code of 1883 No 2 (Cap. 19) provides:

Article 365 – “Voluntarily carnal intercourse with man, woman or animal against the order of nature - imprisonment for a term which may extend ten years.”

Article 365A (as introduced by the “Penal Code (Amendment) Act, No. 22 of 1995”)

“Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of any act of gross indecency with another person, shall be guilty of an offence and shall be punished with imprisonment of either description for a term which may extend to two years or with a fine, or with both and where the offence is committed by a person over eighteen (18) years of age in respect of any person under sixteen (16) years of age shall be punished with rigorous imprisonment for a term not less than 10 years and not exceeding 20 years and with a fine and shall also be ordered to pay compensation of amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such a person.”<sup>3</sup>

The sweeping statements in the Penal Code, addressing the alleged ‘indecent’ of ‘unnatural sex’, serves to criminalize and stigmatize LGBTIQ individuals. In 1995, human rights activists attempted to repeal the Penal Code, which was introduced by the British in 1883. The attempt was met with hostility and disapproval. Instead

<sup>1</sup>OHCHR, *Status by Treaty*, available through the website:

<http://www.unhcr.ch/tbs/doc.nsf/newhvstatbytreaty?OpenView&Start=1&Count=250&CollapseView>, accessed January 10 2008.

<sup>2</sup> *The Yogyakarta Principles*, available through the website: <http://www.yogyakartaprinciples.org>, accessed January 10 2008.

<sup>3</sup> *Penal Code of the Democratic Republic of Sri Lanka*, Chapter 19, Article 365 and 365A.

of decriminalizing homosexuality, the Ministry of Justice exchanged the word ‘males’ in the original legal text with the gender neutral term ‘persons’, thereby criminalizing same sex sexual activity between women as well. The human rights based initiative to repeal the law thus led to increased legal discrimination against the LGBTIQ community. The rights situation of LGBTIQ individuals in Sri Lanka is further complicated by the fact that the Constitution of Sri Lanka fails to guarantee the right to privacy.

Provisions against sexual activity between consenting adults have been found to constitute violate international human rights law. In the case of *Toonen v Australia from 1994*, the UN Human Rights Committee ruled that laws criminalizing consensual same-sex activity violate right to privacy and the right to equality before the law as expressed in articles 17(1) and 26 of the International Covenant on Civil and Political Rights.<sup>4</sup>

The Yogyakarta principles which clarify state obligations under existing human rights law in relation to sexual orientation and gender identity, and which have been prepared and signed by several internationally distinguished human rights experts, also highlight that criminal and other legal provisions that directly or indirectly prohibit sexual activity among people of the same sex who are over the age of consent must be repealed.<sup>5</sup>

EQUAL GROUND therefore recommends the Sri Lankan State to immediately decriminalize same sex sexual relations between persons who are over the age of consent and to ensure that the same age of consent applies to sexual activities between persons of the same sex and persons of a different sex. Furthermore, EQUAL GROUND recommends the State of Sri Lanka to take immediate and targeted steps to embody the principles of equality and non-discrimination on the basis of sexual orientation both in public and in private, in the national constitution of Sri Lanka and ensure the effective realisation of these principles. In addition EQUAL GROUND recommends the state of Sri Lanka to immediately include the right to privacy in the national constitution.

### **State sanctioned hate speech and the rights of LGBTIQ rights activists**

In June 2000, Sri Lanka's Press Council expressed its support for a letter published in the local newspaper *The Island*. It urged that convicted rapists should be unleashed at a conference that were targeting lesbian women and where their human rights situation were to be discussed.<sup>6</sup> The Council said that the letter in the newspaper was published in the interest of the community and argued that so called lesbianism is an act of sadism, which is seen as an offence under the Penal Code of Sri Lanka.<sup>7</sup> The decision stated that “...lesbianism itself is an act of sadism, and salacious publication of any opinion against such activities does not amount to a promotion of sadism or salacity, but any publication which supports such conduct is an obvious promotion of such violence, sadism and salacity”.<sup>8</sup>

The council ruled that the news paper letter was published in good faith and the LGBTIQ rights defender, who had filed the complaint, arguing that the publication of the letter encouraged violence against women, was accused of promoting sadism and salacity due to his work for LGBT rights and as a consequence he was fined. The Council also held that he had no standing to complain on the promotion of violence against lesbian women since he himself is male.<sup>9</sup>

It is the opinion of EQUAL GROUND that the news paper article as well as the ruling of the Press Council highlights the widespread stigma, discrimination and threats that homosexual and bisexual people in Sri Lanka are facing, impairing their participation in public life as well as their freedom of assembly. The ruling also highlights the vulnerability and legal harassment that human rights defenders who are working to protect the rights of LGBTIQ individuals, are still facing.

<sup>4</sup> *Toonen v Australia*, CCPR/C/50/D488/1992, April 4, 1994.

<sup>5</sup> *The Yogyakarta Principles*, Principle 2B.

<sup>6</sup> P. Alles, " Lesbian Conference in Colombo?", *The Island*, August 20, 1999.

<sup>7</sup> Article 365 and Article 365A of the Sri Lanka Penal Code

<sup>8</sup> Sri Lanka Press Council, *Judgement to Complaint no S2/99/2096*, 2000.

<sup>9</sup> *Ibid.*

Furthermore, at the National Consultation meeting on HIV/AIDS and Human Rights, held in Colombo, Sri Lanka in December 2004, at which members of EQUAL GROUND were present, Sri Lanka's Minister for Health Care and Nutrition, Mr Nimal Siripala de Silva said that Sri Lanka would never repeal its law on same sex sexual relations as such behavior is "unnatural". At the 8th International Congress on AIDS in Asia and the Pacific held in August 2007, where the need to combat stigma and discrimination against the LGBTIQ community, including the need to decriminalize same sex sexual relations between adults to halt the spread of HIV, was discussed, Mr Nimal Siripala de Silva said, "I don't want people to think I brought all of these people here (for the congress) to promote lesbianism and homosexuality."<sup>10</sup> These statements show the Sri Lankan government's lack of respect and protection for the human rights of LGBTIQ people.

### **Impunity for crimes committed against LGBTIQ people and police harassment**

Due to social stigma and prejudice surrounding issues of sexual orientation and gender identity, human rights violations endured by the LGBTIQ community are shrouded in silence.

Abuse goes unreported as members of the LGBTIQ community know that they have no legal recourse. If a crime that is based on hatred towards LGBTIQ people is reported to the police, the victims of such crimes often hide their sexual orientation or gender identity due to fear of further stigmatization and discrimination by the police. When the sexual orientation or gender identity of a complainant is involuntarily divulged, it is the experience of EQUAL GROUND that the complaint is met with indifference from the police who often trivialize the issue, even if the allegations are severe. Alternatively complainants might be blamed for offences that have been committed against them on the grounds of their sexual orientation or gender identity. Persecution of LGBTIQ people in the hands of the police appears to be wide-spread and built on the dehumanization of LGBTIQ individuals as well as the criminalization of same sex sexual relations. In addition, the Police periodically detain persons who are or who are perceived to be LGBTIQ and extort money from them through blackmail and threats of exposure. EQUAL GROUND has experience from working with people who have been subjected to such treatment from the Police and has assisted in several such cases.<sup>11</sup> In most instances, the person is beaten and sometimes raped and incarcerated at least over night in order to frighten and shame the individual.

While the law against same sex sexual activity between consenting adults is not uniformly enforced by the authorities, its mere existence is enough for anti-LGBTIQ groups to label LGBTIQ individuals as perverted lawbreakers, creating an environment of impunity for perpetrators and making LGBTIQ persons legitimate targets for abuse under an out dated penal code.

In 2006, a 24 year old student from a university in Colombo was physically abused and left dead on the railway tracks because of his sexual orientation. The perpetrators were never brought to justice and the attack passed largely unnoticed due to the sexual orientation of the victim, highlighting the impunity that prevails for LGBTIQ related crimes. The incident was reported to EQUAL GROUND by one of our members, who had received information and photos of the victim.<sup>12</sup>

### **Violence and persecution of LGBTIQ people**

Violence against LGBTIQ individuals is not restricted to any particular geographical area of Sri Lanka but is wide-spread. However, intolerance and persecution against LGBTIQ people seems to have been fuelled by the civil war. In the North and East, Tamil and Muslim extremists have established an unofficial death penalty for

<sup>10</sup> Zofeen T Ebrahim, "Sri Lanka's Helath Chief Puts a Downer on ICCAP," *TerraViva – The IPS Independent Online Newspaper* 8<sup>th</sup> International Congress on AIDS in Asia and the Pacific, Colombo 19-23 August, 2007, 23 August, 2007, available through the website, <http://www.ipsterraviva.net/tv/colombo2007/currentNew.aspx?new=962>, accessed 10 January 2008.

<sup>11</sup> EQUAL GROUND, *Annual Narrative Report June 2004 to September 2005*, October 2005, p. 4.

<sup>12</sup> Please note that EQUAL GROUND has purposely left out the names of individuals who have been subjected to stigma, discrimination, violence and other harassment due to their sexual orientation and/or gender identity and whose experiences are included in this report. This has been done due to the pending nature of some cases and/or to not further endanger their lives or stigmatize them or their families.

LGBTIQ persons, making it impossible for LGBTIQ rights activists to work in the area. Several people have also informed EQUAL GROUND that in Jaffna, there are posters on public display which list the names of men who are accused of being homosexual or bisexual. Several of these men are allegedly exposed to enforced disappearance.

In Muslim militia controlled areas, especially along the East coast, it is mandatory for women wear a Hijab. This strict dress code limits the ways in which they are able to express their gender identity. In these areas it is also customary for women to be chaperoned by a male family member in public places at all times, leaving lesbian and bisexual women without the freedom to choose their partner or to pursue a life long relationship with a partner of the same sex. Although men are able to move more freely and may be able to hide a relationship with another man on the pretense of being good friends, the fear of being revealed and condemned to death severely limits the ability of gay and bisexual men to engage in a loving relationship in accordance with their sexual orientation.

In the Tamil controlled areas in the North and East, it is mandatory for women to wear a sari or salwa kameez, which limits the gender expressions that are open to them. In addition, Liberation Tigers for Tamil Eelam (LTTE) members and people who live in areas that are under LTTE control are not allowed to choose when and with whom to marry. Instead the LTTE choose their marriage partners for them. No LTTE cadre is allowed to be sexually involved with anyone until their commanders decide that it is time for them to get married. For civilians under LTTE control the situation is similar. Same sex sexual liaisons are considered to be inappropriate, western, immoral, perverted and sick.

A person from Jaffna, who occasionally visits the social events of EQUAL GROUND, has told us that in order to have a sexual relationship with another man he has to travel to Colombo, as the persecution of gay men in Jaffna is so severe.

Two gay men from the East of Sri Lanka have informed us that they have been abducted, tortured, and had a Fatwa placed on their lives, due to their sexual orientation. They have now fled the country to seek asylum in The Czech Republic and in the UK on the grounds of persecution based on their sexual orientation. EQUAL GROUND has provided support in both these asylum cases during the past two years.

In addition we are currently assisting two other young gay Muslim men who have been threatened based on their sexual orientation. One of the men visited our office in Colombo quite recently, despite this potentially placing him in further danger. He told us of the threats he has received from the local militias and the imams from the religious schools in the East. He begged of us to find a way to get him out of the country before something dire happened. This person is the sole breadwinner of his family. If the militias and imams proclaim a fatwa on him and he is killed, his parents and sisters who depend on him will be left destitute and be labeled as pariahs in the community. The other man who we are assisting was forced to flee his home after villages attacked his house because of his sexual orientation. The incident occurred in the southern city of Beruwela, which is a predominantly Muslim town.

Due to the ongoing conflict between the Sri Lankan government and the LTTE, a great number of persons are currently displaced from their homes throughout the north and east with no or very limited relief provided by either the government or the LTTE. Internally displaced LGBTIQ individuals are especially vulnerable when hostilities resurface as they are often specifically targeted and exposed to sexual abuse. Experience from our Tsunami related work in the region in 2005, show that the stresses associated with resettlement are worsened when lesbian, gay and bisexual men and women are separated from their same sex partner and must grieve the separation in silence due to the stigma and discrimination that is associated with their sexual orientation.

LGBTIQ individuals belonging to marginalized ethnic minority groups suffer a double burden when they are rejected by their own community due to their sexual orientation. Combined with the pressure from the ongoing Civil War this marginalization often causes tremendous psychological distress. Sri Lanka has one of the highest

suicide rates in the world.<sup>13</sup> It is the experience of EQUAL GROUND that suicide attempts among LGBTIQ individuals are prevalent and attributed to the isolation, stigma, structural discrimination, lack of voice and rights that many LGBTIQ individuals face. The psychosocial problems that many LGBTIQ individuals face fuel the perception that homosexuality, bisexuality and gender variations are mental disorders in themselves.

In our knowledge the Sri Lankan State does not take any specific active measures to protect the LGBTIQ community against stigma, discrimination and violence related to the ongoing civil war. On the contrary, the state seems to ignore human rights violations that are directly attributed to the sexual orientation or gender identity of a person and laws that criminalize same sex sexual behavior fuel the violations and, as has been previously stated, amounts to a human rights violation in itself.

### **Civil war and the situation for human rights defenders working for LGBTIQ rights**

LGBTIQ rights defenders in Sri Lanka take steps to help LGBTIQ people in gaining visibility and to be heard. However, these human rights defenders face increasing safety hazards in the form of harassment, threats and violence especially where their work is most needed - in the North and East. When visiting the East coast of Sri Lanka on Tsunami related work, EQUAL GROUND spoke with three individuals from three different Non-governmental organizations that are working in the East of the country. All three organizations warned us that our lives might be at risk if we would continue working for the rights of sexual minorities in the region. One of the representatives said: “No, no...don’t even think about that here. They have shot people for being like that” – being ‘like that’ referring to being homosexual. EQUAL GROUND suspended its work on the East coast due to hostilities in the area and has been unable to go back due to the ongoing conflict.

Persecution by the legal system, the lack of the right to privacy in the Sri Lankan constitution as well as the growing Sinhala Buddhist extremist groups and the intolerance to views, practices and identities that are seen as ‘different’ and ‘western’, leave LGBTIQ persons and LGBTIQ human rights defenders particularly vulnerable to harassment, verbal and physical attacks.

### **Summary and recommendations**

In summary, LGBTIQ people in Sri Lanka largely suffer in silence because of the criminalization of same sex sexual behavior, which fuels negative stereotyping of the LGBTIQ population as well as wide-spread discrimination. The national legislation of Sri Lanka regards sexual activity between two consenting adults of the same sex as a crime. The scope of the law was increased in 1995 when same sex sexual relations between women was added to a law that already criminalized sexual contact between consenting male adults. Provisions against sexual activity between consenting adults have been found to violate international human rights law.

The voices of LGBTIQ largely remain unheard because of a society that condemns them and denies their existence. The LGBTIQ community, LGBTIQ individuals and LGBTIQ rights defenders face a lack of recognition and respect, and stigma and discrimination means that LGBTIQ individuals are denied their human rights and the ability to self expression. Furthermore widespread stigma, discrimination and threats of, or encouragement to use violence against sexual minorities go without condemnation and are sometimes openly supported by state actors such as the Press Council, which impairs LGBTIQ individuals’ ability to participate in public life as well as their freedom of assembly.

The state sanctions or ignores stigma and discrimination on the basis of sexual orientation or gender identity and there is no legal protection against discrimination on these grounds. LGBTIQ persons are often traumatized by threats of physical harm, extortion and blackmail. The resentment towards LGBTIQ individuals is great among the police and LGBTIQ individuals are exposed to violence, blackmail and harassment in the hands of the police. Furthermore the impunity for crimes related to hatred or discrimination against LGBTIQ individuals is prevalent.

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<sup>13</sup> World Health Organization, *Suicide Rates*, available at the web site: [http://www.who.int/mental\\_health/prevention/suicide/suiciderates/en/](http://www.who.int/mental_health/prevention/suicide/suiciderates/en/), accessed 10 January 2008.

In addition human rights defenders who work for the rights of LGBTIQ people face harassment, legal sanctions, threats and violence. Such violence and threats of violence is especially prevalent in the Northern and Eastern parts of Sri Lanka where there the internal war has influenced the LGBTIQ rights situation in a negative way and has left LGBTIQ individuals in a particularly vulnerable position. According to our knowledge the Sri Lankan State does not take any specific active measures to protect the LGBTIQ community against stigma, discrimination and violence.

EQUAL GROUND recommends the Sri Lankan State to immediately decriminalize same sex sexual relations between persons who are over the age of consent and to ensure that the same age of consent applies to sexual activities between persons of the same sex and persons of a different sex. Furthermore, EQUAL GROUND recommends the State of Sri Lanka to take immediate and targeted steps to embody the principles of equality and non-discrimination on the basis of sexual orientation and gender identity both in public and in private, in the national constitution of Sri Lanka and to ensure the effective realisation of these principles. In addition EQUAL GROUND recommends the state of Sri Lanka to immediately include the right to privacy in the national constitution.