

**PARALLEL REPORT TO THE UN COMMITTEE ON THE  
ELIMINATION OF DISCRIMINATION AGAINST WOMEN  
REGARDING SRI LANKA'S PROTECTION OF THE RIGHTS  
OF LGBTI PERSONS**

**Compiled by the Kaleidoscope Human Rights Foundation and  
EQUAL GROUND, Sri Lanka**



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## 1. **BACKGROUND**

- 1.1 Kaleidoscope Human Rights Foundation (**Kaleidoscope**) is an NGO that works with local advocacy organisations to protect and promote the rights of lesbian, gay, bisexual, transgender and intersex (**LGBTI**) persons in the Asia Pacific region.
- 1.2 Kaleidoscope, in collaboration with EQUAL GROUND, Sri Lanka, has prepared this report to inform the Committee on the Elimination of All Forms of Discrimination against Women (**Committee**) of areas of concern regarding Sri Lanka's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**) in respect of the human rights of lesbian, bisexual, transgender, and intersex (**LBTI**) individuals. It concludes with recommendations for inclusion in the Committee's concluding observations.

## 2. **EXECUTIVE SUMMARY**

- 2.1 Sri Lanka has made limited progress towards recognising the rights of LBTI persons. Although the Additional Solicitor General with the Attorney General's Department of Sri Lanka has noted that 'laws discriminating on the grounds of sexual orientation and gender identity are unconstitutional',<sup>1</sup> in reality, LBTI persons face significant discrimination in society, culture and the economy and have limited recourse to legal protection from such discrimination.
- 2.2 Kaleidoscope urges the Committee to make the following recommendations to the Government of Sri Lanka (**GoSL**) in its concluding observations:
  - 2.2.1 enact legislation that prohibits discrimination on the basis of sexual orientation, gender identity and intersex status (**SOGII**) in all areas of public life, including employment, education and health care;
  - 2.2.2 include LBTI persons as a specific marginalised group in all of its laws and policies in support of sex and gender equality;
  - 2.2.3 prioritise the decriminalisation of consensual same-sex conduct under ss 365 and 365A of the Sri Lankan Penal Code;
  - 2.2.4 allow transgender persons to legally change their gender, whether by issuing gender recognition certificates or otherwise, without requiring sex affirmation surgery as a prerequisite, and provide them with adequate and accurate national identity

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<sup>1</sup> United States Department of State, '2014 Country Reports on Human Rights Practices - Sri Lanka' (2015) <http://www.refworld.org/docid/559bd53a12.html>.

documents such as identification cards or passports that reflect their preferred name and gender;

- 2.2.5 remove offences under legislation that can be used by parties such as the Police to further discriminate against LGBTI persons, including 'cheating by personation' under section 399 of the Penal Code and the Vagrancy Ordinance of 1842;
- 2.2.6 establish greater socio-economic equality and protections for LGBTI persons in rural areas;
- 2.2.7 legalise same-sex marriage and allow same-sex couples to register civil partnerships; and
- 2.2.8 amend the *Adoption Ordinance* to allow LGBTI persons to adopt children.

### 3. LEGAL AND SOCIAL CONTEXT IN SRI LANKA

- 3.1 Sri Lanka acceded to CEDAW in 1981. The *Constitution of the Democratic Socialist Republic of Sri Lanka* (the **Constitution**) guarantees certain fundamental human rights, such as the right to equality and non-discrimination. Section 12(1) states that '*[a]ll persons are equal before the law [and] no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds*'. Further, section 12(3) prevents restriction of access to shops, public restaurants, hotels, places of public entertainment and places of public worship of the person's own religion on the basis of race, religion, language, caste, or sex and section 12(4) states that '*[n]othing in this Article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women...*'.
  - 3.2 There is no explicit reference to sexual orientation, gender identity or intersex status within the Sri Lankan Constitution, however the GoSL has previously claimed that section 12 does protect persons from stigmatisation and discrimination on the basis of sexual orientation and gender identities.<sup>2</sup>
  - 3.3 In relation to the rights of women, the GoSL stated in its 2015 State Party Report to the Committee that '*...there is adequate provision within the existing statutory regime in Sri Lanka to accord statutory recognition to the right to equality and to recognize thereby the right of women not to be discriminated on the grounds of gender.*' Further, the GoSL stated

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<sup>2</sup> OutRight Action International, 'Sri Lanka Government says LGBT rights are constitutionally protected' (20 October 2014) <https://www.outrightinternational.org/content/sri-lanka-government-says-lgbt-rights-are-constitutionally-protected>.

that '[t]he absence of a Women's Rights Bill and the incorporation therein of the principle of equality does not detract from the right that is already recognized in the Constitution of Sri Lanka.'<sup>3</sup>

- 3.4 Despite the claims of the GoSL in regards to the various protections afforded to its citizens on the basis of gender identity and sexual orientation, as the International Gay and Lesbian Human Rights Commission (**IGLHRC**) pointed to in its report on Sri Lanka to the UN Human Rights Commission in 2014, in circumstances where the Constitution does not have any explicit reference to sexual orientation, gender identity or intersex status, LGBTI persons will continue to be at a significant disadvantage in accessing rights, protections and legal guarantees in Sri Lanka.<sup>4</sup> Given this, the GoSL's purported recognition of equality of LGBTI persons before the law appears to be unsubstantiated.

#### 4. **NON-DISCRIMINATION (ARTICLE 2 and 5)**

- 4.1 Article 2 of CEDAW requires Sri Lanka to '*pursue by all appropriate means and without delay a policy of eliminating discrimination against women*'. The Committee has previously stated in its General Recommendation No. 28 that:

*The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and **sexual orientation and gender identity**... State parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned (our emphasis)*

- 4.2 Article 5(a) of CEDAW requires Sri Lanka to take all appropriate measures to '*modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women*'. This includes prejudices grounded in stereotypical, heteronormative and/or cisgendered assumptions about the sex, sexual orientation or gender identity of women, which have the harmful effect of marginalising LGBTI women.

- 4.3 As mentioned above at paragraph 3.2, despite the absence of a specific reference to sexual

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<sup>3</sup> UN Committee on the Elimination of Discrimination Against Women, *Consideration of reports submitted by States parties under article 18 of the Convention, Eighth periodic report of States parties due in 2015: Sri Lanka*, UN Doc CEDAW/C/LKA/8 (29 May 2015) <http://www.refworld.org/docid/56e7c3c84.html>, [12].

<sup>4</sup> International Gay and Lesbian Human Rights Commission, 'Violence Against Lesbians, Bisexual Women and Transgender Persons in Sri Lanka', *Sri Lanka Shadow Report to the ICCPR* (October 2014).

orientation, gender identity or intersex status within the Sri Lankan Constitution, and the fact that sections 365 and 365A of the Sri Lankan Penal Code explicitly criminalise sexual activity between two consenting adults of the same sex, the GoSL has claimed that section 12 of the Constitution protects against discrimination on the grounds of sexual orientation or gender identity.<sup>5</sup>

- 4.4 Kaleidoscope reiterates that the GoSL claim is without demonstrable merit. There is widespread evidence of negative comments against LGBTI groups and individuals made by public officials and state-controlled media. For example, *LGBT Weekly* recently reported that a Sri Lankan Government minister categorically ruled out allowing same-sex couples to marry in Sri Lanka in a statement to newspaper editors.<sup>6</sup> Sri Lankan politician, Nalinda Jayatissa, stated 'I am totally against lesbian, gay, bisexual and transsexual rights. This is not the need of the human being.' He also added that '[s]ame sex marriage is unnatural. It is against the evolution of the human being.'<sup>7</sup>
- 4.5 Further, the GoSL recently elected to remove a provision that sought to decriminalise consensual same-sex conduct in its new five-year Human Rights Action Plan for 2017-2021. This action clearly illustrates that actively protecting the rights and interests of same-sex attracted persons in Sri Lanka is not a domestic priority.<sup>8</sup>
- 4.6 In addition to the material outlined above, section 7 of this report focuses more specifically on discrimination against LGBTI women in education, health care and employment.

### ***Recommendations***

- 4.7 We urge the Committee to include within its concluding observations **recommendations** that the GoSL:
- 4.7.1 enact legislation that specifically prohibits discrimination on the basis of a person's SOGII in all areas of public life, including employment, education and health care;
- 4.7.2 prioritise the decriminalisation of same-sex conduct under ss 365 and 365A of the Sri Lankan Penal Code; and

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<sup>5</sup> UN Committee on the Elimination of Discrimination against Women, *State Party Report: Sri Lanka*, CEDAW/C/LKA/8 (29 May 2015), [36].

<sup>6</sup> Steve Lee, "Sri Lanka categorically rules out marriage between same-sex couples", *LGBT Weekly* (online), (24 April 2014) <http://lgbtweekly.com/2014/04/24/sri-lanka-categorically-rules-out-marriage-between-same-sex-couples/>.

<sup>7</sup> Human Rights Watch, "All Five Fingers Are Not the Same" *Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka* (15 August 2016) <https://www.hrw.org/report/2016/08/14/all-five-fingers-are-not-same/discrimination-grounds-gender-identity-and-sexual>, 12.

<sup>8</sup> Author unavailable, 'GSP Plus: Govt. rushing through rights plan', *The Sunday Times* (online), (15 January 2017) <https://www.pressreader.com/sri-lanka/sunday-times-sri-lanka/textview>.

4.7.3 include LGBTI persons as a specific marginalised group in all of its laws and policies in support of sex and gender equality.

5. **LEGAL RECOGNITION OF GENDER IDENTITY (ARTICLES 1, 2, 3 AND 15)**

5.1 The ability to obtain legal recognition of one's gender identity is an important aspect of the right to privacy and to equal recognition and protection before the law. Failure to recognise the gender identity of transgender women is in breach of Articles 1, 2, 3 and 15 of CEDAW.

5.2 While it is possible for an individual to change their legal gender in Sri Lanka, a lack of clear and simple procedures mean that public officials are often left with an unfettered discretion as to the requirements and results of any application to do so.<sup>9</sup> Human Rights Watch has reported that '[t]ransgender people in Sri Lanka are rarely able to obtain a national identity card and other official documents that reflect their preferred name and gender, exposing them to constant and humiliating scrutiny about their gender identity.'<sup>10</sup>

5.3 The National Human Rights Commission of Sri Lanka has proposed that 'gender recognition certificates' be issued to allow individuals to change the gender noted on their official documents. As of July 2016, the Commission was waiting for a response to the proposed certificate from the Registrar General's Department.<sup>11</sup>

5.4 However, at present, the certificate's requirements include evidence of medical treatment and certification from a psychiatrist.<sup>12</sup> A requirement that a person undergo surgery in order to obtain legal gender recognition is a form of forced medical treatment and sterilisation, in breach of Articles 12 and 16 of CEDAW. It is also in breach of Principle 3 of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, which states that, '*[n]o one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity.*'<sup>13</sup>

***Recommendations***

5.5 We urge the Committee to include within its concluding observations a **recommendation** that the GoSL allow transgender persons to legally change their gender, whether by issuing

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<sup>9</sup> Above n. 7.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, Principle 3 (March 2007) [http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf), 3.

gender recognition certificates or otherwise, without requiring sex affirmation surgery as a prerequisite.

## 6. NATIONALITY (ARTICLE 9)

6.1 Article 9 of CEDAW grants all women and their children equal rights to men to acquire, change or retain their nationality, and refers specifically to change of nationality upon marriage. Children obtain their citizenship from their Sri Lankan parents, regardless of whether they are born in Sri Lanka or overseas.<sup>14</sup>

6.2 As mentioned above at paragraph 5.2, transgender persons in Sri Lanka often have a difficult time obtaining official documentation that reflects their preferred name and gender. This means that transgender persons are effectively prevented from accessing an accurate national identity card or passport. Whilst there is no indication that Sri Lankan citizenship has been taken away from transgender persons, the evidence contained in Human Rights Watch's report illustrates how their ability to prove their nationality is compromised in a way that other citizens do not experience.<sup>15</sup>

### *Recommendations*

6.3 We reiterate our **recommendation** that the GoSL allow transgender persons to legally change their gender, and to provide them with adequate and accurate national identity documents such as identification cards or passports that reflect their preferred name and gender.

## 7. EDUCATION, EMPLOYMENT AND HEALTH (ARTICLES 10, 11 AND 12)

7.1 Articles 10, 11 and 12 of CEDAW require Sri Lanka to take all appropriate measures to eliminate discrimination against women in order to ensure them equal rights as men in the fields of education, employment and health.

7.2 Similarly, the Yogyakarta Principles affirm that everyone, regardless of sexual orientation and/or gender identity, has the right to education, the right to the highest attainable standard of physical and mental health, the right to decent and productive work, and to protection against discrimination on that basis.<sup>16</sup>

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<sup>14</sup> United States Department of State, 'Country Reports on Human Rights Practices: Sri Lanka 2015 Human Rights Report' (2015) <http://www.state.gov/documents/organization/253187.pdf>, 23.

<sup>15</sup> Above n. 7, 18 - 24.

<sup>16</sup> Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender

7.3 The issues in Sri Lanka in these fields largely stem from invisibility of LGBTI communities, as well as social and cultural prejudice against homosexuality, gender non-conformity and intersex status. The absence of non-discrimination laws and policies, as mentioned in section 4 above, is a particularly harmful manifestation of this culture, as it allows such a prejudiced social framework to remain in place unchallenged.

### ***Education***

7.4 The IGLHRC has reported that women in Sri Lanka perform relatively well on development indicators such as literacy and education, however they are still affected by a heteronormative and patriarchal society that places inordinate value on the role of women in the home.<sup>17</sup>

7.5 Further, in order to access education, accurate national identity documents are required, raising problems for transgender persons in accessing identity documentation that reflects their accurate identity, as outlined above.<sup>18</sup> Such social and cultural prejudice is compounded again by the broader problem of inadequate sexual education in schools in Sri Lanka.<sup>19</sup> Human Rights Watch has previously highlighted that school sex education programs do not contain LGBTI issues in the curriculum.<sup>20</sup>

### ***Employment***

7.6 The Women's Support Group, based in Sri Lanka, has previously reported to the Committee that while some private workplaces may have non-discrimination policies in place, this is quite rare in Sri Lanka.<sup>21</sup> The absence of adequate workplace policies leads to the situation that sexual harassment, bullying and discrimination is not prohibited or even discouraged. As with many other areas, victimisation is disproportionately experienced by LGBTI persons. In its report on *'Violence Against Lesbians, Bisexual Women and Transgender Persons in Sri Lanka'*, the IGLHRC provides numerous examples of transgender persons who have found it difficult to find employment, and stories of individuals who have been dismissed from their employment after being 'discovered' by their employer.<sup>22</sup> In addition, lesbian women have reported being interrogated and intrusively questioned about their private life when their

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Identity, Principles 12, 16 and 17 (March 2007) [http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles\\_en.pdf](http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles_en.pdf).

<sup>17</sup> International Gay and Lesbian Human Rights Commission (IGLHRC), *Violence: Through the Lens of Lesbians, Bisexual Women and Trans People in Asia - Sri Lanka* (5 June 2014), <http://www.refworld.org/docid/5477125f4.html>, 8.

<sup>18</sup> Above n. 7, 18.

<sup>19</sup> UNDP, *Stigma, Discrimination and Key Affected Populations: Strengthening the Role of Media Advocacy in Sri Lanka through a Critical Analysis of News Media Coverage* (2013), <http://www.snap-undp.org/elibrary/Publications/HIV-2013-stigma-discrimination-and-kaps.pdf>.

<sup>20</sup> Above n. 7, 13.

<sup>21</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>22</sup> Above n. 4, 3.

employers have discovered their sexual orientation.<sup>23</sup>

### ***Healthcare***

- 7.7 The right to health is disproportionately denied to those of LGBTI status. In particular, the provision of reproductive and sexual health care in Sri Lanka does not consider the particular needs or experiences of LGBTI people.<sup>24</sup> This is compounded by the fact that same-sex activity is still criminalised, as people are less likely to be honest and transparent about their medical and personal histories to public healthcare providers, and as a result they are denied confidential and appropriate healthcare services.<sup>25</sup>
- 7.8 Separately, families on occasion seek help from medical or mental health providers to 'cure' persons who manifest 'non-normative tendencies', which can lead to institutionalisation, psychotherapy, medication or detention, in complete violation of these persons' human rights.<sup>26</sup> These forms of treatment are in conflict with Principle 18 of the Yogyakarta Principles, which states that '*[n]o person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity. Notwithstanding any classifications to the contrary, a person's sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed.*'<sup>27</sup>
- 7.9 Further, intersex children and young people in Sri Lanka may also be subjected to 'normalising' surgeries to 'fix' their sex without their informed consent.<sup>28</sup> At present, there are no enacted laws or policies in Sri Lanka that provide appropriate guidance to medical professionals and that protect intersex children and young people within the family unit or from inappropriate and harmful procedures in the healthcare context.<sup>29</sup>

### ***Recommendations***

- 7.10 We repeat our recommendations from above and urge the Committee to include within its concluding observations **recommendations** that the GoSL:

7.10.1 enact legislation that prohibits discrimination on the basis of a person's SOGII in all

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<sup>23</sup> Above n. 21.

<sup>24</sup> Above n. 7, 39 - 47.

<sup>25</sup> Above n. 21.

<sup>26</sup> Ibid.

<sup>27</sup> Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, Principles 12, 16 and 17 (March 2007) <[http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles\\_en.pdf](http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles_en.pdf)>.

<sup>28</sup> Above n. 7. Also see, author unavailable, "Status of LGBTIQ persons within Sri Lanka's legal framework", *Daily News*, (8 February 2016).

<sup>29</sup> Ibid, Daily News.

areas of public life, including employment, education and health care; and

7.10.2 include LGBTI persons as a specific marginalised group in all of its laws and policies in support of sex and gender equality.

## 8. ECONOMIC AND SOCIAL EQUALITY (ARTICLE 13)

### *Economic inequality*

8.1 Same-sex relationships are not legally recognised in Sri Lanka and as a result, LGBTI persons in same-sex relationships are denied access to various social and economic entitlements and benefits, including:

8.1.1 access to forms of social security available to heterosexual couples, such as the State Retirement Pension Fund;

8.1.2 bank loans (because their income is not considered jointly);<sup>30</sup> and

8.1.3 recognition of the partnership when one of the partners dies intestate.<sup>31</sup>

8.2 Additionally, women do not enjoy full equality in employment in Sri Lanka. Research conducted by the South Asian Association for Regional Cooperation (SAARC), indicates that the rate of female unemployment has been twice the rate of male unemployment since the 1960's.<sup>32</sup> Further, women are disproportionately represented in the relatively low paying manufacturing and services sectors.<sup>33</sup> This lack of economic equality for women further prevents LGBTI persons from attaining economic independence and is also likely to be a factor that forces women to enter unwanted marriages.<sup>34</sup>

### *Social inequality*

8.3 In day-to-day life, LGBTI persons report reluctance to express themselves in terms of appearance and dress in the manner in which they would like. The IGLHRC and Human Rights Watch have both outlined in their research how this reluctance stems from pressure to conform to traditional gender norms in the home, in the work place and in society, as well as the existence of laws that may be used to penalise transgender persons, being 'cheating by

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<sup>30</sup> Above n. 4.

<sup>31</sup> Above n. 21.

<sup>32</sup> The South Asian Association for Regional Cooperation (SAARC), 'SAARC Social Charter: Sri Lanka Action Plan 2008-2015' [http://www.cepa.lk/content\\_images/publications/documents/104-S-Sri%20Lanka%20Action%20Plan%202008-2015.pdf](http://www.cepa.lk/content_images/publications/documents/104-S-Sri%20Lanka%20Action%20Plan%202008-2015.pdf), 10.

<sup>33</sup> Ibid.

<sup>34</sup> *LH and IP (gay men: risk) Sri Lanka CG* [2015] UKUT 00073 (IAC), [37].

personation' under section 399 of the Penal Code or the Vagrancy Ordinance of 1842, which empowers authorities to detain people loitering in public on the basis of their appearance.<sup>35</sup>

- 8.4 In Sri Lanka, there have been unofficial reports of members of women's national sporting teams being forced to leave their team when suspected of being a lesbian.<sup>36</sup>

### ***Recommendations***

- 8.5 We urge the Committee to include within its concluding observations **recommendations** that the Government:

8.5.1 enact legislation that prohibits discrimination on the basis of a person's SOGII in the economy and society; and

8.5.2 remove offences under legislation that can be used to further discriminate against LGBTI persons, including 'cheating by personation' under section 399 of the Penal Code and the Vagrancy Ordinance of 1842.

## **9. EQUALITY FOR RURAL WOMEN (ARTICLE 14)**

- 9.1 Research conducted at the University of Sri Jayewardenepura, Sri Lanka, indicates that the socio-economic status of Sri Lankan women appears significantly better than women in many other South Asian nations.<sup>37</sup> However, as mentioned above at paragraph 8.2, the reality is that, on the whole '...women hold minor positions with low status and low pay in the workforce.'<sup>38</sup> Women in Sri Lanka continue to experience significant barriers in relation to full and equal participation in the economy, as well as decision-making and political processes. This inequality plays out in rural areas in Sri Lanka, where, for example, the role of women as both decision-makers for and beneficiaries of rural housing programmes, remains 'neglected and unfulfilled.'<sup>39</sup>

- 9.2 According to the SAARC, many women work in agriculture in rural areas (around 42 per cent of employed women), principally in unpaid family labour or on plantations.<sup>40</sup> As a result of involvement in unpaid family labour, rural women are less likely to be independent of their

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<sup>35</sup> Above n. 4, 3; above n. 7, 1.

<sup>36</sup> Above n. 21.

<sup>37</sup> H.M.A Herath, 'Place of Women in Sri Lankan Society: Measures for Their Empowerment for Development and Good Governance' (2015) 1(1) *Vidyodaya Journal of Management*, 1-14.

<sup>38</sup> *Ibid.*

<sup>39</sup> Y. Rasanayagam, 'Women as Agents and Beneficiaries of Rural Housing Programmes in Sri Lanka', in J. H. Momsen and V. Kinnaird (eds), *Different Places, Different Voices: Gender and development in Africa, Asia, and Latin America*. (Routledge, 1993), 146-158, 149.

<sup>40</sup> Above n. 32, 11.

family, especially where they remain unmarried.<sup>41</sup> Longstanding traditions and rituals for the family in Sri Lanka, such as marriage practices and patriarchy in household decision-making, perpetuate the subordination of women within the family unit.<sup>42</sup> It has been noted that lesbian and bisexual women in rural areas are at particular risk of persecution and violence, owing to these pervasive cultural ideas regarding the subordinate role that Sri Lankan women play in the home and in society.<sup>43</sup> A report completed by EQUAL GROUND on homophobic violence and hate crimes illustrates this with 17 case studies that record violence experienced by lesbian and bisexual women in rural areas of Sri Lanka.<sup>44</sup>

- 9.3 It is important to highlight that there is a paucity of research into the unique experience of LGBTI persons in rural areas of Sri Lanka. Given the broader experience of Sri Lanka women in rural areas outlined above, Kaleidoscope submits that there is a pressing need to better understand the specific issues that affect LGBTI persons in rural areas of Sri Lanka, in order to ensure greater socio-economic equality for these subpopulations in future.

### ***Recommendation***

- 9.4 We urge the Committee to include within its concluding observations a **recommendation** that the GoSL establish greater socio-economic equality for LGBTI persons in rural areas, as well as greater protections for these subpopulations from discrimination and violence that is borne out of harmful and pervasive cultural norms and traditions.

## 10. **MARRIAGE AND FAMILY RELATIONS (ARTICLE 16)**

- 10.1 Article 16 of CEDAW provides that appropriate measures must be taken to eliminate discrimination against women in all matters relating to marriage and family relations, including the right to enter marriage, choose a spouse and have children. In violation of this article, LGBTI persons in same-sex relationships in Sri Lanka are unable to marry or register a civil partnership. Further, there is evidence that some lesbian and bisexual women have been prevented by their families from having same-sex relationships and have instead been forced to marry men.<sup>45</sup>
- 10.2 Further, as a previous report of Kaleidoscope to the United Nation Human Rights Committee pointed out, same-sex partners are unable to adopt children, as the *Adoption Ordinance* only

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<sup>41</sup> Canadian Immigration and Refugee Board, 'Sri Lanka: treatment of sexual minorities, including legislation, state protection and support services' (2012).

<sup>42</sup> S. Jayaweera, 'Women Education and Development'. (1995) 20(12) *Economic Review (People's Bank Publication)*, 15-21.

<sup>43</sup> *LH and IP (gay men: risk) Sri Lanka CG* [2015] UKUT 00073 (IAC), [108]. ]

<sup>44</sup> Kemone Brown, 'Struggling Against Homophobic Violence and Hate Crimes' (EQUAL GROUND, 2011).

<sup>45</sup> *LH and IP (gay men: risk) Sri Lanka CG* [2015] UKUT 00073 (IAC), [30], [34].

allows a married couple to adopt children.<sup>46</sup>

### ***Recommendations***

10.3 We urge the Committee to include within its concluding observations **recommendations** that the GoSL:

10.3.1 legalise same-sex marriage and allow same-sex couples to register civil partnerships; and

10.3.2 amend the *Adoption Ordinance* to allow LGBTI persons to adopt children.

## **11. CONCLUSION AND RECOMMENDATIONS**

11.1 In conclusion, we urge the Committee to include in its concluding observations the following recommendations that the GoSL:

11.1.1 enact legislation that prohibits discrimination on the basis of a person's SOGII in all areas of public life, including employment, education and health care;

11.1.2 include LGBTI persons as a specific marginalised group in all of its laws and policies in support of gender equality;

11.1.3 prioritise the decriminalisation of consensual same-sex conduct under ss 365 and 365A of the Sri Lankan Penal Code;

11.1.4 allow transgender persons to legally change their gender, whether by issuing gender recognition certificates or otherwise, without requiring sex affirmation surgery as a prerequisite, and provide them with adequate and accurate national identity documents such as identification cards or passports that reflect their preferred name and gender;

11.1.5 remove offences under legislation that can be used to further discriminate against LGBTI persons, including 'cheating by personation' under section 399 of the Penal Code and the Vagrancy Ordinance of 1842;

11.1.6 establish greater socio-economic equality and protections for LGBTI persons in rural areas;

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<sup>46</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), 10.

11.1.7 legalise same-sex marriage and allow same-sex couples to register civil partnerships; and

11.1.8 amend the *Adoption Ordinance* to allow LGBTI persons to adopt children.