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Violations by Sri Lanka of the Economic, Social And Cultural Rights of Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning (LGBTIQ) People

Submitted for consideration at the 61st Session of the
Committee on Economic, Social and Cultural Rights

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This report is submitted to the Committee on Economic Social and Cultural Rights (Committee) in anticipation of its June 2017 review of Sri Lanka's compliance with the International Covenant on Economic, Social and Cultural Rights (Covenant). The purpose of our report is to bring to the Committee's attention serious and ongoing violations of the Covenant rights of lesbian, gay, bisexual, transgender, intersex and questioning (LGBTIQ) individuals in Sri Lanka.

As this Committee has repeatedly made clear, the Covenant obligation to ensure non-discrimination in the enjoyment of economic, social and cultural rights prohibits discrimination based on, among other grounds, sexual orientation and gender identity.³ States parties may not themselves discriminate, and they are obliged to take appropriate measures to prohibit, prevent, sanction and remedy acts of discrimination by non-State actors.⁴

This Committee has likewise made clear that the Art. 12 right to health includes the right to protection from the State against violence and discrimination based on sexual orientation and

¹ **EQUAL GROUND** is a non-governmental, non-profit organization based in Colombo, Sri Lanka, which advocates for equal social and political rights for the lesbian, gay, bisexual, transgender, intersex, and questioning (LGBTIQ) community in Sri Lanka. EQUAL GROUND's work involves identifying and finding solutions for the numerous issues faced by the LGBTIQ community to enable LGBTIQ individuals to live fulfilling lives, free from stigma and discrimination.

² **The Center for International Human Rights (CIHR) of Northwestern Pritzker School of Law** is a non-governmental, non-profit organization located in Chicago, Illinois, United States. CIHR is dedicated to human rights education and to legal and policy-focused human rights advocacy within the United States and worldwide. CIHR conducts legal research, compiles reports, and works with individuals and NGOs in cases and projects addressing violations of human rights. CIHR is in special consultative status with the United Nations Economic and Social Council (ECOSOC).

³ Committee on Economic, Social and Cultural Rights, *General Comment No. 20 Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 32, U.N. Doc. E/C.12/GC/20 (2 July 2009).

⁴ *Id.*, ¶¶ 7-8, 11, 36-37 and 40.

gender identity.⁵ States parties have a positive “obligation to combat homophobia and transphobia,”⁶ and LGBTIQ individuals have the right to be “fully respected for their sexual orientation, gender identity and intersex status.”⁷

As this report will show, Sri Lanka is failing to comply with these obligations:

I. Sri Lanka continues to criminalize adult, consensual same-sex sexual conduct. This leads to arbitrary arrests and detentions, police harassment and acts of extortion, reluctance on the part of LGBTIQ people to report crimes to the police, and, more generally, the perceived legitimization of violence and discrimination based on sexual orientation and gender identity.

II. Sri Lanka’s Constitution and laws fail to expressly prohibit discrimination based on sexual orientation and gender identity. In the absence of legal protection, discrimination against LGBTIQ people is widespread, including in law enforcement, employment, health care, housing and education.

III. Sri Lanka fails to respect the gender identity of transgender people by failing to enact into law an administrative procedure whereby transgender individuals can obtain, upon simple request, identity documents that match their name and gender identity. At present, in order to obtain revised identity documents, transgender individuals must undergo psychiatric evaluation, hormone therapy and surgical treatments, which may or may not be wanted and, if wanted, may not be available due to issues of access and cost. As a result, many transgender individuals have not been able to obtain national identity cards and other official documents that accurately reflect their name and gender identity, leaving them vulnerable to humiliation, discrimination, harassment and the possibility of violence at each of the many times in daily life when such documents must be presented.

This report will conclude by suggesting questions to be asked of Sri Lanka during the Committee’s dialogue with the State delegation and recommendations to be made to Sri Lanka in the Committee’s Concluding Observations.

I. Sri Lanka continues to criminalize adult, consensual same-sex sexual relations

The following Sri Lankan laws criminalize adult, consensual same-sex sexual conduct:

Section 365 of the Penal Code criminalizes “carnal intercourse against the order of nature,”⁸ which is widely understood to apply only to sexual acts between two individuals of the same sex. The penalty for violation of § 365 is up to ten years’ imprisonment and a fine.⁹

⁵ Committee on Economic, Social and Cultural Rights, *General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, ¶¶ 23, 34-35, 42 and 59, U.N. Doc. E/C.12/GC/22 (2 May 2016) [hereinafter “General Comment No. 22”].

⁶ *Id.*, ¶ 23.

⁷ *Id.*

⁸ Sri Lankan Penal Code § 365.

⁹ *Id.*

Section 365A of the Penal Code criminalizes “any act of gross indecency with another person.”¹⁰ Violations are punishable by up to two years’ imprisonment, a fine, or both.¹¹ Although “gross indecency” is not defined by the law or any Sri Lankan court decision, the current law is understood to target sexual acts and displays of romantic affection between two individuals of the same sex.¹² Because the term “gross indecency” is left open to interpretation by police officers, prosecutors, and judges, the breadth and ambiguity of what could constitute “gross indecency” invites abuse.

Section 399 of the Penal Code, which makes it a criminal offense to “cheat by personation,”¹³ has been used by the Police to target LGBTIQ individuals, particularly transgender individuals.¹⁴

Sri Lanka’s Vagrants Ordinance,¹⁵ which “prohibits soliciting or committing acts of ‘gross indecency,’ or being ‘incorrigible rogues’ procuring ‘illicit or unnatural intercourse,’”¹⁶ has been used to arrest and harass LGBTIQ individuals.

Although there have been no convictions under §§ 365 and 365A since 1948, these laws (as well as § 399 and the Vagrants Ordinance, under which there have been convictions) still have the effect of perpetuating discrimination, harassment, violence, and unequal treatment of LGBTIQ individuals. These laws serve as a pretext for denying LGBTIQ individuals a range of rights to which they are entitled under the Covenant, and they legitimize the stigma of LGBTIQ individuals, who face pervasive societal discrimination.

Police officers have used threats of prosecution under these laws to harass and extort LGBTIQ individuals, and the existence of these laws makes LGBTIQ crime victims unwilling to report crimes to the police. Examples follow.

In February 2016, “H”, a gay man, was approached by two men who attempted to seduce him. When H refused, the two strangers revealed that they were police officers and threatened to arrest him. The officers told H that they knew all about his work with EQUAL GROUND and they lectured him, saying that working with EQUAL GROUND is “promoting homosexuality.” They falsely told H that joining the organization is criminal. The officers confiscated H’s identity card and stole all the money H was carrying. They continued to harass H, threatening to tell his family

¹⁰ Sri Lankan Penal Code § 365A.

¹¹ *Id.*

¹² See Scott Roberts, *Former Commonwealth Head of Human Rights Condemns Sri Lanka over Gay Harassment*, Pink News (23 Sept. 2013, 13:53) available at <http://www.pinknews.co.uk/2013/09/23/former-commonwealth-head-of-human-rights-condemns-sri-lanka-over-gay-harassment/> (last visited 5 May 2017).

¹³ Sri Lanka Penal Code § 399.

¹⁴ Human Rights Watch, *All Five Fingers Are Not the Same: Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka* (2016), p. 16 [hereinafter “Human Rights Watch Report 2016”], available at https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf (last visited 5 May 2017).

¹⁵ EQUAL GROUND, *Strengthening of Legal Protection for LGBT in Sri Lanka: Road to Decriminalization: Situation Analysis*, p. 12 (2012) [hereinafter “Situation Analysis”].

¹⁶ Human Rights Watch Report 2016, *supra* note 14, p. 16.

or to return and arrest him in the future. H was left unable to pay his rent or send money to his family, and he lives in fear of another similar encounter with the police.¹⁷

In another February 2016 incident, a transgender man in Colombo was arrested and detained for over 15 hours before being produced in court. While he was in police custody, the police made derogatory statements and threw cigarettes at him, and they asked him to remove his underwear and reveal himself to prove he was a man. When EQUAL GROUND was able to speak with him, he said he was willing to file a complaint against the police. However, after his friends warned him of possible police reprisals, since the police knew where he lived and worked, the victim refused to file a complaint.¹⁸

On another occasion in 2016, a gay man and his boyfriend were approached by two police officers while they were walking on a beach in Mount Lavinia. As a crowd gathered to watch, the officers berated the two men and threatened to arrest them, humiliating them in front of the crowd. The police demanded that the two men hand over all the money they had. To escape the humiliating situation, the men complied with the officers' demand.¹⁹

In May 2015, a gay man, while walking with his transgender friend, was detained by two police officers. The officers drove him to a beach where one of the officers anally raped him. He did not file a complaint about this attack for fear of retribution.²⁰

In early 2014, a lesbian couple from Puttalam District visited a guest house in a nearby town. The guest house staff called the police and asked them to arrest the couple. The police found the women seated together and arrested them. Fortunately, the couple was released after an EQUAL GROUND field officer heard about the arrest, went to the police station, and persuaded the police not to press charges.²¹

Incidents like these of arrest and police abuse are not uncommon. Interviews with 61 LGBTIQ Sri Lankans conducted by Human Rights Watch between October 2015 and January 2016 revealed that more than half of the respondents reported being detained by the police without cause at least once.²² Nearly two dozen respondents reported that they "had suffered sexual, physical, or severe verbal abuse by the Sri Lankan police."²³ Sixteen of the respondents reported having suffered sexual or physical abuse by the police.²⁴

¹⁷ EQUAL GROUND, *Incident Reports of Human Rights Violations faced by LGBTIQ Community in Sri Lanka*, at pp. 70-71 [hereinafter "Incident Reports"].

¹⁸ Incident reported to EQUAL GROUND in Feb. 2016.

¹⁹ Incident Reports, *supra* note 17, p. 37.

²⁰ Human Rights Watch Report 2016, *supra* note 14, p. 32.

²¹ Case reported to EQUAL GROUND by Puttalam Field Officer, 2014.

²² Human Rights Watch, *Sri Lanka: Challenging 'Gender Norms' Brings Abuse* (15 Aug. 2016, 00:00 EDT) [hereinafter "Challenging 'Gender Norms'"], available at <https://www.hrw.org/news/2016/08/15/sri-lanka-challenging-gender-norms-brings-abuse> (last visited 5 May 2017).

²³ Human Rights Watch Report 2016, *supra* note 14, p. 30.

²⁴ Challenging 'Gender Norms,' *supra* note 22.

II. Sri Lanka’s Constitution and laws do not expressly prohibit discrimination based on sexual orientation and gender identity, and in the absence of such legal protection, discrimination against LGBTIQ people is widespread

Neither the Constitution nor the laws of Sri Lanka explicitly prohibit discrimination on the basis of sexual orientation or gender identity. Article 12(1) of the Constitution states, “All persons are equal before the law and are entitled to the equal protection of the law.”²⁵ However, Article 12(2), which prohibits discrimination on the basis of various grounds, does not include sexual orientation or gender identity among the grounds upon which discrimination is prohibited.²⁶

In 2014, the Government of Sri Lanka made the unprecedented and very welcome statement to the Human Rights Committee that Article 12 of the Constitution does protect persons from discrimination on the basis of sexual orientation and gender identity.²⁷

However, particularly given the retention of laws criminalizing same-sex sexual conduct and the well-entrenched societal attitudes hostile to sexual minorities, Sri Lanka needs to amend its Constitution to explicitly prohibit discrimination on the grounds of sexual orientation and gender identity, in order to send a strong signal that these forms of discrimination are outlawed.

This is a particularly critical time for Sri Lanka to act, because the country is now engaged in the process of revising its Constitution. Sri Lanka has the opportunity, as part of this Constitutional reform, to explicitly prohibit discrimination on the basis of sexual orientation and gender identity. Unfortunately, to date, efforts to amend the Constitution to include such a prohibition have not been successful.

Even if the Constitutional provision on non-discrimination were to be amended to include sexual orientation and gender identity, two other provisions of the current Constitution (articles 15 and 16), if allowed to stand, would remain extremely worrisome:

Article 15(7), entitled “Restrictions on fundamental rights,” provides that the Article 12 right to equality and non-discrimination can be restricted to protect “morality” or to “meet[] the just requirements of the general welfare of a democratic society.”²⁸

Article 16(1) states: “All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding [fundamental rights] provisions of this Chapter.”²⁹ Article 16(1) thus precludes any challenge to existing laws,

²⁵ The Constitution of the Democratic Socialist Republic of Sri Lanka (As amended up to 15th May 2015), Revised Edition – 2015, Art. 12(1), *available at* <https://www.parliament.lk/files/pdf/constitution.pdf> [hereinafter “Constitution”] (last visited 5 May 2017).

²⁶ *Id.*, Art. 12(2).

²⁷ Replies of Sri Lanka to the list of issues of the Human Rights Committee, ¶ 43 (3 Sept. 2014), U.N. Doc. CCPR/C/LKA/Q/5/Add.1, *available at* http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fLKA%2fQ%2f5%2fAdd.1&Lang=en.

²⁸ Constitution, *supra* note 25, Art. 15(7).

²⁹ *Id.*, Art. 16(1).

such as the Penal Code provisions that criminalize same-sex sexual conduct, on the ground that those laws violate the Article 12 right to equality.

Thus, in order to guarantee equality and non-discrimination on the basis of sexual orientation and gender identity, it is not enough to amend Art. 12 of the Constitution to expressly prohibit discrimination based on sexual orientation and gender identity. In addition, Sri Lanka must also eliminate (a) the provision in Art. 15(7) that allows fundamental rights to be restricted on the basis of an undefined “morality” and (b) the provision in Art. 16(1) that bars any judicial challenge to the constitutionality of existing laws that violate the Art. 12 right to equality.

Sri Lanka’s laws do not ameliorate the current deficiency in its Constitution. Sri Lanka has no law that prohibits discrimination on the basis of sexual orientation or gender identity.

The lack of any Constitutional protection or anti-discrimination laws or policies has exposed LGBTIQ individuals to pervasive discriminatory treatment in all aspects of daily life, including employment, housing, health care, education and law enforcement.

In 2016, a transgender man employed at a hospital was harassed and fired from his job after his supervisor learned that he had undergone gender confirmation surgery. The victim’s supervisor verbally harassed him for “going against nature” and demanded to see his genitals. Although his employment contract previously had been renewed three times, the victim was fired and forced to sign a document falsely stating that he was resigning.³⁰

In December 2016, a gay man reported to EQUAL GROUND that he was forced to relinquish a five-year lease on property for his business when his landlord threatened to expose the man’s sexuality to the police. Barely two years into the lease, the landlord received an offer from a third party to rent the property at a higher price than what the man was paying. The landlord forced the man to vacate the premises by threatening to report his sexual orientation to the police and by further threatening to persuade the man’s employees to falsely testify that he was engaging in same-sex sexual conduct within the premises.³¹

In 2015, a transgender man recovering from surgery in a government hospital suffered severe pain for hours when his repeated requests for pain medication were denied because of his transgender status. Although he only revealed his transgender status to his surgeon, he believed his status was revealed to nurses and staff, as he saw them pointing at him and talking.³²

In 2015, a bisexual male student was harassed, humiliated and assaulted because of his sexual orientation. A teacher found the student’s cell phone and discovered messages the student had sent to his boyfriend. The next day, the teacher slapped the student and berated him in front of his classmates. When the student asked why he was being punished, his teacher slapped him again and said he did not want any homosexuals at the school because he did not want all the students to

³⁰ Incident reported to EQUAL GROUND in Feb. 2016.

³¹ Incident reported to EQUAL GROUND in Dec. 2016.

³² Incident Reports, *supra* note 17, pp. 3-4.

“become” homosexual. The teacher, who kept the student’s phone, faced no punishment for publicly humiliating and assaulting the student.³³

In recent years, EQUAL GROUND has received numerous reports from individuals who were forced into heterosexual marriages, usually by their family members.

In 2013, a transgender man was terminated from his job in a factory after a security guard went through his belongings and found EQUAL GROUND materials in his possession. The guard reported his findings to the factory management, who said they were going to call the transgender man’s parents to tell them about his sexuality. They then fired him.³⁴

A 2012 study of 119 LGBT individuals in Sri Lanka conducted by EQUAL GROUND documented the widespread nature of discrimination based on sexual orientation and gender identity. With respect to employment, 24% of respondents reported that they had lost their job in the previous two years because of their sexual orientation or gender identity,³⁵ 22% indicated that they had been refused employment or other work opportunities because of their sexual orientation or gender identity,³⁶ and 12% stated that they had been denied a promotion or had experienced an adverse change in their job description or the nature of their work.³⁷ With respect to housing, 24% of survey respondents reported that, within the past two years, they had been unable to rent housing or had been forced to change their residence because of their sexual orientation or gender identity.³⁸ With respect to education, of the 20 respondents who had attended school in the past two years, 75% had been dismissed, suspended or prevented from attending school on the basis of their gender identity or expression and/or sexual orientation.³⁹ In a subsequent 2016 study, excessive bullying, marginalization and discrimination were reported to have forced many LGBT students to drop out of school.⁴⁰

EQUAL GROUND, as an organization working for the LGBTIQ community, has faced discrimination when seeking approval for events from public authorities and the police. For instance, Police permission to hold a public vigil in commemoration of the victims of homophobia, biphobia and transphobia for the International Day Against Homophobia, Biphobia and Transphobia (IDAHOT) in 2016, was withheld with no explanation for such actions. Attempts to sensitize the Police on a national level have been refused, on the grounds of LGBTIQ issues being a 'non-issue' to the Sri Lanka Police.

It is interesting to note also that any attempts made by EQUAL GROUND to engage with government authorities are either ignored, or are responded to by the authorities only via indirect, informal avenues of communication, even in instances where other civil society organizations are

³³ *Id.*, p. 25.

³⁴ Interview from EQUAL GROUND Hotline, 4 Oct. 2013.

³⁵ EQUAL GROUND, *Towards a Lesbians, Gays, Bisexuals, Transsexuals and Transgendered (LGBT) Stigma and Discrimination Index for Sri Lanka*, at pp. 38-39 (2012) [hereinafter “Stigma and Discrimination Index”].

³⁶ *Id.*, p. 39.

³⁷ *Id.*, p. 40.

³⁸ *Id.*, pp. 37-38.

³⁹ *Id.*, p. 41.

⁴⁰ EQUAL GROUND, *A Report on the Situation for LGBTIQ Persons in Sri Lanka*, p. 4 (5 July 2016) [hereinafter “2016 Situation Report”].

acknowledged or contacted directly. This highlights a 'non-recognition issue' whereby the LGBTIQ community is not recognized as a minority with legitimate problems in Sri Lanka, resulting in the community being excluded from policy consultations. This, in turn, leads to discrimination and exclusion from the enjoyment of economic and social rights enjoyed by other citizens.

These are but a few examples of the discriminatory treatment faced by LGBTIQ individuals. Because of the laws criminalizing same-sex sexual relations and the deep social stigma perpetuated by these laws, LGBTIQ individuals are reluctant to come forward with their complaints. Accordingly, the actual prevalence of discriminatory treatment is likely to be much higher than the number of complaints received by EQUAL GROUND.

III. Sri Lanka violates the right to legal recognition of gender identity by failing to provide an administrative procedure under which individuals may, simply upon request, obtain identity documents that reflect their name and gender identity

Every person has a fundamental right to legal recognition of his or her self-defined gender identity.⁴¹ As the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity affirm, “[e]ach person’s self-defined . . . gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.”⁴²

To respect and ensure the right to legal recognition of gender identity, States must have in place procedures for modifying, upon request, the gender designations on all State-issued identity documents, including (among others) birth certificates, identity cards, and passports.⁴³ Because names can be a marker of gender, these procedures must allow individuals to change their legally recognized names if they wish to do so.

States may not deny or burden a person’s request to have identity documents modified to conform to their gender identity. While some transgender individuals may choose to receive hormonal or surgical treatments, these treatments cannot be made a prerequisite for legal recognition of gender identity.⁴⁴ Nor may a State require other prerequisites such as sterilization or the dissolution of an

⁴¹ Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, Principle 3 (2007), *available at* http://www.yogyakartaprinciples.org/principles_en.htm [hereinafter “Yogyakarta Principles”]. These principles “were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds, including judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, NGOs and others.” Website of the Yogyakarta Principles, “*About the Yogyakarta Principles*,” <http://www.yogyakartaprinciples.org/principles-en/about-the-yogyakarta-principles/> (last visited 5 May 2017).

⁴² Yogyakarta Principles, *supra* note 41, Principle 3.

⁴³ *Id.*, Principle 3(C); Office of the U.N. High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, ¶¶ 69, 70, and 79(i), U.N. Doc. A/HRC/29/23 (4 May 2015), *available at* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/088/42/PDF/G1508842.pdf?OpenElement> [hereinafter “High Commissioner for Human Rights”].

⁴⁴ Yogyakarta Principles, *supra* note 41, Principle 3; High Commissioner for Human Rights, *supra* note 43, ¶ 70.

existing marriage.⁴⁵ As this Committee has recognized, “surgery or sterilization requirements for legal recognition of one’s gender identity” are violations of the right to sexual and reproductive health.⁴⁶

Other human rights treaty bodies have been in accord. Thus, for example, the Committee on the Elimination of Discrimination Against Women, in its 2010 Concluding Observations to the Netherlands, has expressed concern with a requirement that transgender women undergo compulsory sterilization as a prerequisite to changing their birth certificates.⁴⁷ Similarly, the Human Rights Committee, in its 2008 Concluding Observations for Ireland, indicated that the State party “should also recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates.”⁴⁸ In its 2013 Concluding Observations for Ukraine, the Human Rights Committee expressed concern over a requirement that, to obtain legal recognition of their gender, transgender persons must submit to “compulsory confinement in a psychiatric institution” for up to 45 days and “mandatory corrective surgery.”⁴⁹

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has also recognized the right to legal recognition of gender identity. In a 2015 report on “Discrimination and violence against individuals based on their sexual orientation and gender identity,” prepared at the request of the United Nations Human Rights Council, OHCHR expressed concern at the following discriminatory practices:

69. In spite of recent advances in several countries, transgender persons are generally still unable to obtain legal recognition of their preferred gender, including a change in recorded sex and first name on State-issued identity documents. As a result, they face multiple rights challenges, including in employment and housing, applying for bank credit or State benefits, or when travelling abroad.

70. Regulations in States that recognize changes in gender often impose abusive requirements as a precondition of recognition – for example, by requiring that applicants be unmarried and undergo forced sterilization, forced gender reassignment and other medical procedures, in violation of international human rights standards.⁵⁰

⁴⁵ Yogyakarta Principles, *supra* note 41, Principle 3; High Commissioner for Human Rights, *supra* note 43, ¶ 70.

⁴⁶ General Comment No. 22, *supra* note 5, ¶ 58.

⁴⁷ *Concluding Observations of the Committee on the Elimination of Discrimination Against Women on the Netherlands*, ¶ 46, U.N. Doc. CEDAW/C/NLD/CO/5 (5 Feb. 2010), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/NLD/CO/5&Lang=en.

⁴⁸ Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee on Ireland*, ¶ 8, U.N. Doc. CCPR/C/IRL/CO/3 (30 July 2008), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FIRL%2FCO%2F3&Lang=en.

⁴⁹ Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of Ukraine*, ¶ 10, U.N. Doc. CCPR/C/UKR/CO/7 (22 Aug. 2013), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/UKR/CO/7&Lang=en.

⁵⁰ High Commissioner for Human Rights, *supra* note 43, ¶¶ 69-70.

The High Commissioner recommended that States remedy this discrimination by “[i]ssuing legal identity documents, upon request, that reflect preferred gender, eliminating abusive preconditions, such as sterilization, forced treatment and divorce.”⁵¹

Unfortunately, Sri Lankan law does not provide a simple administrative procedure through which transgender people can obtain, upon request, a new birth certificate, which is a prerequisite in Sri Lanka for obtaining other identity documents (such as identity cards and passports) that reflect their correct name and gender.⁵²

Prior to June 2016, wide discretion had been left to government personnel in the Registrar General’s office regarding the requirements for amending the birth certificate. Some transgender people were told that they must submit proof of having undergone genital reconstruction surgery; others were told to provide testimony from their parents about the person’s gender identity; others were asked for a certificate from a psychiatrist.⁵³ These onerous requirements were difficult or impossible to meet. For example, not all transgender people want to undergo surgical treatments, and not all who want to can afford to do so. The overall result was that transgender individuals were only rarely able to amend their original birth certificates and obtain national identity cards and other official documents that correctly reflect their name and gender identity.⁵⁴

In June 2016, Sri Lanka adopted a new policy under which transgender individuals can request the issuance of a “Gender Recognition Certificate,” which would allow a person to obtain an amended birth certificate with the sex designation matching the person’s gender identity. Based on the amended birth certificate, the person would be able to obtain an identity card and other legal documents that conform to the person’s gender identity.⁵⁵

While Sri Lanka is to be commended for attempting to address the problem of identity documents for transgender individuals, unfortunately, the new policy has very serious shortcomings:

- * The person must be evaluated by a psychiatrist;
- * The psychiatrist must certify that the person “was referred for hormone therapy and the necessary surgical treatment;”
- * The psychiatrist must certify that the person “underwent the gender transformation process;”⁵⁶ and

⁵¹ *Id.*, ¶ 79(i).

⁵² See Human Rights Watch Report, *supra* note 14, pp. 2, 21-24.

⁵³ *Id.*

⁵⁴ *Id.*, p. 2.

⁵⁵ Dr. P.G. Mahipala, Director General of Health Services, Ministry of Health, Nutrition and Indigenous Medicine, *Issuing of Gender Recognition Certificate for Transgender Community*, General Circular No. 01-34/2016, 16 June 2016 [hereinafter “General Circular No. 01-34/2016”], available at <http://203.94.76.60/csmoh/viewcircular.php?cno=01-34/2016&med=english> (last visited 3 May 2017).

⁵⁶ Gender Recognition Certificate, attached to General Circular No. 01-34/2016, *supra* note 55.

- * The Gender Recognition Certificate policy was published only as an administrative circular, and hence, unlike a law, it remains in force only at the discretion of the administrative authority.

Under this policy, before a person can obtain a Gender Recognition Certificate, he or she must undergo a psychiatric evaluation. Additionally, the policy implies that the person must also complete hormone therapy and surgical treatments before he or she can obtain a Gender Recognition Certificate. These requirements violate the human rights of transgender individuals. As noted above, not all transgender individuals want these treatments, and those who do want them often are unable to obtain them due to issues of access and cost. As a result, it continues to be the case that only rarely are transgender individuals able to amend their original birth certificates and obtain national identity cards and other official documents that correctly reflect their name and gender identity.

The ongoing inability of transgender individuals to obtain, upon request, birth certificates and other identity documents that conform to their gender identity causes significant suffering.

In Sri Lanka, birth certificates and identity cards must be shown at many points in daily life – for example, when a person applies for a job, goes to a bank, seeks medical care at a public hospital, visits a government office, or interacts with the police. In every such situation, a transgender person whose official documents do not match his or her name and gender identity is vulnerable to humiliation, discrimination, harassment and the possibility of violence. Indeed, the lack of access to education, healthcare, and employment experienced by transgender people as a result of their inability to obtain official documents reflecting their correct name and gender designation is oftentimes the root cause of the exposure to violence and other ill treatment and abuses to which most transgender people are subject.

IV. Suggested questions for Sri Lanka

1. As part of the Constitutional reform process that is now underway, will the State commit to including in the equality/non-discrimination article an explicit prohibition of discrimination on the basis of sexual orientation and gender identity?
2. Will the State repeal provisions of the Penal Code that criminalize consensual, adult, same-sex sexual relations?
3. Please provide information about the new policy regarding Gender Recognition Certificates. Is it correct that under this policy, a transgender person cannot obtain a Gender Recognition Certificate without first undergoing a psychiatric evaluation and completing hormonal therapy and genital reconstruction surgery? Is the State willing to reconsider these requirements? What steps has the State taken to train relevant State officials and employees on the proper implementation of this policy? Since this policy was adopted in June 2016, how many people have obtained Gender Recognition Certificates?

4. What measures will the State take to end human rights abuses by the police and other State actors against LGBTIQ individuals and civil society organizations that work to protect the human rights of LGBTIQ people? How will the State ensure that State actors who violate human rights are held accountable and that victims are afforded a remedy?

5. What measures will the State take to increase public tolerance and respect for sexual minorities? What training programs will be instituted for health care providers, teachers, and public employees in order to combat discrimination against and harassment of LGBTIQ individuals, in order to ensure them the equal enjoyment of Covenant rights?

V. Suggested recommendations for Sri Lanka

1. Sri Lanka should decriminalize adult, consensual same-sex sexual conduct by repealing Penal Code §§ 365 and 365A and by reviewing the application of Penal Code § 399 and the Vagrants Ordinance, to clarify that they do not apply to adult, consensual same-sex sexual conduct or displays of affection.

2. Sri Lanka should amend its Constitution and adopt comprehensive anti-discrimination legislation to explicitly include sexual orientation and gender identity among the prohibited grounds of discrimination. It should also amend its Constitution to provide that any legislation, subsidiary legislation, executive decision or administrative policy that is inconsistent with the Constitution can be reviewed and invalidated by an independent judiciary. Sri Lanka should take all necessary steps to combat and prevent discrimination and violence against persons of diverse sexual orientations and gender identities and expressions, and ensure their equal enjoyment of all human rights, including in particular the rights to health, education, work, safety and freedom from forced marriage.

3. Sri Lanka should develop and implement programs to educate and sensitize law enforcement and health care workers to ensure that LGBTIQ individuals are treated fairly and respectfully.

4. Sri Lanka should enact into law an administrative procedure for legal recognition of gender identity, under which an individual may, upon simple request, obtain a change in their gender designation and (if the person wishes) their name, on all identity documents, including (but not limited to) birth certificates, identity cards, and passports. The new process for changing one's gender designation and name should be based entirely on self-declaration of gender and name, and should not require any form of medical evaluation, treatment or procedures.