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LKA103948.E

Sri Lanka: Treatment of sexual minorities, including legislation, state protection, and support services

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Legislation and general situation

Homosexual acts are illegal in Sri Lanka (EQUAL GROUND 7 Dec. 2011; ILGA May 2011, 9, 43; US 8 Apr. 2011, Sec. 6). Article 365 of the Sri Lankan Penal Code criminalizes "carnal intercourse against the order of nature" and provides for a penalty of up to ten years in prison (Sri Lanka 1885, Art. 365; see also CHRI n.d. and ILGA n.d.). In its country survey for Sri Lanka, the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) explains that Article 365 "is understood to prohibit anal intercourse ..." (ibid.). Article 365A of the Penal Code prohibits "public and private acts of gross indecency" between two people, which may be punished by a fine or up to two years imprisonment (Sri Lanka 1885, Art. 365A; see also CHRI n.d. and ILGA n.d.). According to ILGA, Article 365 applies only to men, while Article 365A applies to both men and women (ILGA n.d.). A shadow report prepared for the United Nations (UN) Committee on the Elimination of Discrimination Against Women by the Women's Support Group (WSG), a Sri Lankan non-governmental organization (NGO) that advocates for lesbian and bisexual women and transgendered persons (SALGBT n.d.b), states that Article 365A was amended in 1995 to specifically criminalize sexual activity between women (WSG Jan. 2011, 2).

However, sources report that these provisions of the Penal Code are rarely enforced (US 8 Apr. 2011, Sec. 6; ILGA n.d.). The United States Department of State's *Country Reports on Human Rights Practices for 2010* states that police are "not actively arresting and prosecuting those who engaged in LGBT activity" (US 8 Apr. 2011, Sec. 6). The provisions have also reportedly not led to any convictions to date (WSG Jan. 2011, 2; EQUAL GROUND 2011, 4; CHRI n.d.). Nonetheless, WSG reports that complaints citing the provisions of the law are received by the police and adds that the criminalization of homosexuality "paves the way for police and anti-gay groups to brand all lesbian, bisexual, transgendered persons as 'perverts' and criminals" (Jan, 2011, 3).

Homosexuality is reportedly marginalized within Sri Lankan society (*Lakbima News* 4 Dec. 2011; Xinhua 21 Sept. 2011). According to the Xinhua news agency, homosexuality is a "taboo" subject (ibid.). An article on the English

website of Sri Lankan newspaper *Lakbima News* states that "many" gay men and women remain closeted due to the "stigma" associated with homosexuality (4 Dec. 2011). In correspondence sent to the Research Directorate, the Executive Director of EQUAL GROUND, an advocacy and support group for the Sri Lankan LGBT community (*Daily Mirror* 25 June 2010), stated that due to the efforts of organizations like hers, LGBT people have achieved greater visibility in Sri Lanka, which has led to greater acceptance, but which has also been paralleled by an increase in homophobia (EQUAL GROUND 7 Dec. 2011).

Sources report that lesbian, gay, bisexual and transgender people may be subject to violence (ibid.; US 8 Apr. 2011, Intro.; WSG Jan. 2011, 5). According to a summary prepared in 2008 by the UN Office of the High Commissioner for Human Rights for Sri Lanka's universal periodic review, a submission by EQUAL GROUND to the UN Human Rights Council stated that violence against the Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning (LGBTIQ) community included death threats and extrajudicial killings (UN 3 Apr. 2008, para 12).

Several sources indicate that crimes committed against members of the LGBT community are underreported (EQUAL GROUND 7 Dec. 2011; US 8 Apr. 2011, Sec. 6; WSG Jan. 2011, 3). Two sources state that this underreporting of crimes by LGBT people is due to their fear of being further victimized by police (EQUAL GROUND 7 Dec. 2011; US 8 Apr. 2011, Sec. 6). Similarly, the WSG shadow report offers the explanation that these crimes go unreported due to the lack of protection offered to members of the LGBT community (WSG Jan. 2011, 3).

Members of the LGBT community reportedly face discrimination (EQUAL GROUND 7 Dec. 2011; US 8 Apr. 2011, Intro.; WSG Jan 2011, 3). According to a summary by the Office of the UN Commissioner for Human Rights of a submission by more than thirty Sri Lankan groups and individuals to the UN Human Rights Council, "LGBTIQ individuals are denied access to health services, education and employment and the ability to participate in social and public life" (UN 3 Apr. 2008, Para. 12). According to the EQUAL GROUND executive director, members of the LGBT community "lose their jobs, are kicked out of their homes [and] have difficulty accessing health care, housing, education and justice" (EQUAL GROUND 7 Dec. 2011).

The WSG shadow report states that members of the lesbian, gay and transgender community may be denied access to healthcare and are subject to ignorance of their specific needs by healthcare providers (WSG Jan. 2011, 6). WSG also notes that some lesbians, bisexual women and transgendered people have been subject to abuse and exploitation by health care providers taking advantage of the criminalization of homosexual acts (ibid.). According to two sources, the criminalization of homosexuality also impedes HIV prevention and treatment (*Lakbima News* 4 Dec. 2011; *Time* 2 July 2009). In addition, the WSG shadow report states that, "[t]ransgender men remain a section of the population most at risk of HIV" (Jan. 2011, 7).

Cultural, socio-economic and geographic differences

The Executive Director of EQUAL GROUND expressed the opinion that LGBTIQ people in the Tamil or Muslim communities may face greater difficulties because these groups are "ultra conservative" (EQUAL GROUND 7 Dec. 2011).

However, she also noted that the LGBTIQ community is "increasingly" threatened by Sinhalese Buddhist nationalists, among others, who claim that "homosexuality is a western value which erodes Sri Lankan culture, morals and family values" (ibid.).

The Executive Director also provided the following information regarding socio-economic and regional differences within Sri Lanka with regard to the LGBT community:

[T]here is a huge difference in how people are treated based on their socio-economic status. LGBTIQ persons in the rural areas for example, suffer enormous hardships - stigma and discrimination is rife - and they cannot be openly gay or enjoy a normal same sex relationship.

Most rural gay men especially, migrate to urban areas where there are more opportunities for them to meet others who are like them and have relationships, albeit on the down low. (ibid.)

The Xinhua news agency states that most homosexuals in Sri Lanka live in the larger cities (21 Sept. 2011). In further correspondence with the Research Directorate, the Executive Director of EQUAL GROUND stated that "a significant number of LGBT persons" live in Colombo (EQUAL GROUND 12 Dec. 2011). The Executive Director added that acceptance levels in Colombo were "slightly better" than those of other areas, but that "[i]n most places in Sri Lanka, marginalization and homophobia are the norm" (ibid.).

Lesbian and bisexual women

According to the EQUAL GROUND executive director, lesbian and bisexual women "are the most marginalized" among the LGBT community "and are very invisible, even in urban areas" (ibid. 7 Dec. 2011). In observations regarding Sri Lanka, the UN Committee on the Elimination of Discrimination Against Women expressed concern that, due to the criminalization of homosexuality in Sri Lanka, women in same-sex relationships are excluded from legal protection and are subject to arbitrary detention (UN 4 Feb. 2011, 5).

A report on the situation of lesbian and bisexual women in Sri Lanka produced by EQUAL GROUND, based on research conducted between April 2010 and June 2011, states that lesbian and bisexual women are more vulnerable than gay and bisexual men because women are not seen as equal (2011, 5). According to the report, lesbian and bisexual women are ostracized by their family and society and some have been driven to suicide (ibid.). The report adds that lesbian and bisexual women are often subject to a combination of homophobic violence, gender-based violence, and domestic violence (ibid., 7). According to the report, lesbian and bisexual women face the greatest risk of violence from their parents, siblings and relatives, who attempt to "institutionalize these women, restrict them from leaving the home, withdraw economic and other necessary support, arrange unwanted marriages and express other forms of physical aggression" (ibid., 8). The report also notes that these women are dependent on their families and some may feel powerless in confronting violent threats by their family members or threats to report them to the police (ibid., 5)

Transgender people

Sources report that it is difficult to amend the sex classification on official documents (US 8 Apr. 2011, Sec. 6; WSG Jan. 2011, 5). According to sources, individuals must first have their sex on identity documents changed before going through sex-reassignment surgery (ILGA 10 Apr. 2011; WSG Jan. 2011, 5). The WSG shadow report states that a medical practitioner "risks his/her license if he/she performs sex altering surgery on a client whose birth certificate notes his/her sex at birth" (ibid.). WSG adds that

[t]ransgender reported to the WSG, a transpersons have spoken of the reluctance of employers to offer them employment. In one case sman had been dismissed from his employment after he had been 'discovered' by his employer. (ibid., 6)

According to WSG, there have been court cases against women accused of "misrepresentation" and "impersonation" for "disguising" themselves as men and cases of transwomen arrested for "misleading the public" (ibid., 4). (ibid., 4).

State protection

Sources report that there is no legal protection or recourse for the LGBT community in Sri Lanka (EQUAL GROUND 7 Dec. 2011; WSG Jan. 2011, 3 US 8 Apr. 2011, Sec. 6). Two sources explain that the existence of the Penal Code's legal provisions regarding homosexuality may lead to "harassment" of members of the LGBT community by police officers (ibid. Sec. 6; ILGA n.d.). According to the EQUAL GROUND executive director,

the existence of the Penal Code criminalizing same sex relationships gives the Police [...] impunity to continue harassing and marginalizing the LGBTIQ community. LGBT persons are routinely arrested, sometimes for just walking on the street, and are subject to blackmail, extortion, physical and mental violence, rape etc. LGBTIQ persons don't report crimes against them because they are further marginalized and victimized when the police get to know they are Queer. (EQUAL GROUND 7 Dec. 2011)

Other sources similarly indicate that members of the LGBT community are subject to assault and extortion by police officers (US 8 Apr. 2011, Sec. 6; CHRI n.d.). According to the WSG shadow report, "the Vagrancy Ordinance [has been] used to wrongfully detain transgendered people and ... sexual minorities because they ... look different" (WSG Jan. 2011, 5). The summary of EQUAL GROUND's submission to the UN Human Rights Council states that there was state-sanctioned hate speech directed towards the LGBT community (UN 3 Apr. 2008, para. 12).

In June 2010, an article in the Sri Lankan daily newspaper the *Daily Mirror* quoted the Sri Lankan Prime Minister as stating it was "not wrong" for LGBT people "to seek rights" and that he was willing to listen to what they wanted (25 June 2010). However, according to the WSG shadow report, LGBT support organizations received no response from the Prime Minister after sending a joint letter asking for a meeting (WSG Jan. 2011, 2).

Support services

Several LGBT NGOs exist in Sri Lanka (US 8 Apr. 2011, Sec. 6; CHRI n.d.;

SALGBT n.d.a). According to the EQUAL GROUND executive director, LGBT organizations do not receive any financial assistance from Sri Lankan government sources directly or indirectly (13 Dec. 2011). *Country Reports 2010* states that "[s]ome NGOs working on LGBT problems did not register with the government" (US 8 Apr. 2011, Sec. 6). In addition to the aforementioned EQUAL GROUND and the WSG the Diversity and Solidarity Trust (DAST), a group that caters to gay men and male-to-female transgenders, is also present in Sri Lanka (IDAHO n.d.). Another group, Companions on Journey, is no longer active according to the EQUAL GROUND executive director (13 Dec. 2011).

EQUAL GROUND, which is based in Colombo, has been in operation since 2004, organizes community events, runs a resource centre and operates a telephone counselling service (EQUAL GROUND 1 Feb. 2011). The Support Group was formed in 1999 and offers peer support services and a drop-in centre in Colombo (SALGBT n.d.b). The WSG also liaises with other domestic and international human rights groups (ibid.). The organization's website was not active at the time of the writing of this Response. According to an article on the ILGA website, DAST provides a sexual reassignment surgery support system to assist transgender persons going through the process (ILGA 10 Apr. 2011). According to the article, the support system is highly confidential "due to the possible threats from law enforcement authorities" (ibid.).

According to *Country Reports 2010*, events for the LGBT community are held throughout the year (US 8 Apr. 2011, Sec. 6). In particular, Pride events are held every year (Groundviews 9 July 2010; ILGA n.d.). However, ILGA notes that Pride events are held "without parades or demonstrations," noting that "[a] public event involves flying rainbow kites in the park" (ibid.). According to the EQUAL GROUND executive director, while Pride events have been peaceful for the most part, there have been some incidents that had to be defused (EQUAL GROUND 13 Dec. 2011). However, the Executive Director added that no police protection would have been available if needed (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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