



# HUMAN RIGHTS VIOLATIONS FACED BY LGBTQ PEOPLE IN SRI LANKA

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(AUGUST 2021 - FEBRUARY 2022)

AN ANALYSIS BY BRIDGE

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✉ [bridgetoequalitycampaign@protonmail.com](mailto:bridgetoequalitycampaign@protonmail.com)

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## TERMINOLOGY

<b>LGBTQ :</b>	LGBTQ is an acronym for lesbian, gay, bisexual, transgender, and queer or questioning
<b>Lesbian :</b>	A woman who is physically, emotionally, and/or spiritually attracted to other women.
<b>Gay :</b>	A person physically, emotionally, and/or spiritually attracted to someone of the same sex. Usually used to describe men loving men and frequently used to identify the whole LGBTIQ community – as in ‘Gay Community’.
<b>Bisexual :</b>	A person physically, emotionally, and/or spiritually attracted to both men and women.
<b>Transgender :</b>	A person whose sense of personal identity and gender does not correspond with their birth sex.
<b>Questioning :</b>	A person who is questioning their sexuality or gender identity.
<b>Queer :</b>	A word that describes sexual and gender identities other than straight and cis-gender. Lesbian, gay, bisexual, and transgender people may all identify with the word queer.
<b>Cis-gender :</b>	Denoting or relating to a person whose sense of personal identity and gender corresponds with their birth sex.
<b>Survivors :</b>	The LGBTQ persons who have suffered human rights violations or been the victims of common crimes are referred to in this brief as survivors.
<b>Perpetrators :</b>	The identified individuals who have been responsible for subjecting the survivors to human rights violations and common crimes are referred to as perpetrators

<b>Documentation Officers (DO) :</b>	These are Field officers working in the grassroots with YOH & NTN, tasked with finding survivors. These DOs are often members of the community with connections within the community and/or substantial social media influence.
<b>Fundamental rights :</b>	Fundamental rights are the human rights declared and recognized by the Constitution of the Democratic Socialist Republic of Sri Lanka and as per (Article 4(d)) of the Constitution of the Democratic Socialist Republic of Sri Lanka, they "shall be respected, secured and advanced by all the organs of government, and shall not be abridged, restricted or denied save in the manner and to the extent provided by the Constitution." These rights are set out in Chapter III of the Constitution and include Articles 11, 12, 13, and 14.
<b>Common crimes :</b>	Common crimes are criminal offenses that are committed against persons. The bulk of the common crimes are defined in the Penal Code Ordinance No. 2 of 1883 of Sri Lanka and some others are defined in legislation such as the Motor Traffic, Act, No. 8 of 2009, the Vagrants Ordinance of 1842, etc.
<b>Identifying factors :</b>	These are the various factors the survivors have in common such as age, gender, sexual orientation, geographical location, economic status, etc.
<b>Out status :</b>	If the survivor is publicly open about their sexual orientation/gender identity.
<b>Minority ethnic groups:</b>	This refers to the minority ethnic groups in Sri Lanka, and in this Data Brief includes Tamils and Muslims among others, mostly concentrated in the Northern and Eastern Provinces of Sri Lanka.

# INTRODUCTION

Individuals in Sri Lanka are protected from discrimination based on ‘sex’ and “other such grounds” under Article 12(2) of the Constitution (enacted in 1978). However, “Carnal intercourse and acts of ‘gross indecency between same-sex individuals (described in law as “acts against the order of nature”) are criminalized under Section 365 and Section 365A of Sri Lankan Penal Code, 1833, thus, criminalising consensual same-sex sexual acts regardless of the gender of those involved. These penal laws together with various social stigmas, have subjected LGBTQ individuals to an array of prejudices, injustices, and violence for decades. While the movement towards the decriminalisation of same- sex relationships has grown in strength since it emerged in the late 1990s, these legal, political and social barriers remain.

The objectives of this data analysis brief are as follows;

- To analyse the offenses and human rights violations committed against a cross-section of the LGBTQ community.
- To provide quantitative analysis of the key issues faced by members of the community, the common denominators relating to the most prevalent type of common crimes and human rights violations, and the perpetrators of the said crimes and violations.
- To support the work and strengthen the knowledge of local activists, lawyers, and human rights defenders in understanding domestic issues faced by the LGBTQ community.
- To effectively engage with the Human Rights Commission of Sri Lanka (HRCSL) and UN human rights mechanisms along with the UN Independent Expert on Sexual Orientation and Gender Identity and Expression.
- To focus on overcoming challenges imposed by the current legal framework and facilitating the overall promotion and protection of the human rights of the LGBTQ community.



## Section 3

### METHODOLOGY

The Data brief quantitatively analyses 80 cases (36 Common Crimes and 44 Human Rights violations (HRV), collected throughout one and a half years with the help of two organizations Young Out Here (YOH) and the National Transgender Network (NTN). It aims to analyse the issues faced by the LGBTQ community of Sri Lanka, both in the form of Human Rights violations and Common Crimes.

YOH and NTN collected the cases in the form of interviews by Documentation Officers ('DO's of the respective organisations, both YOH and NTN have 10 DOs each). The DOs have used their contacts and reached out to the survivors. Following this they have conducted interviews with the Survivors and gathered information by filling the information gathering sheets drafted by the Local Legal Advisor of YOH and NTN) regarding the HR violations or the Common Crimes committed against them. Cases where the survivors have consented to submit to the police or the Human Rights Commission have been submitted to those institutions with Written Consent and the remaining have been recorded for documentation.

BRIDGE took measures to gather cases from the North-East including communicating with networks already in place. Unfortunately, we were not able to obtain adequate support for the collection of cases. Even in the instances where survivors were willing to speak, most preferred not to go to the authorities due to different reasons including their status being outed and/or fear of reprisals. The provided data must be understood in this context.

The Data Brief will identify the prevalent violations against LGBTQ persons in Sri Lanka, with the use of the identified cases, and quantify the survivors based on common denominators such as age, gender, sexual orientation, geographical location, economic status, type of violation, remedy sought, etc and identify key findings.

## EXPLANATION

**1.1 WHAT ARE COMMON CRIMES**

Common crimes identified in this Data Brief are criminal offenses that are committed against the survivors. The majority of these common crimes are defined in the Penal Code, Ordinance No. 2 of 1883 of Sri Lanka, and some others are defined in legislation such as the Vagrants Ordinance of 1842 and the Prevention of Domestic Violence Act, No 34 of 2005.

The analysis of the cases demonstrates that the crimes committed against the survivors include assault (section 342 of the Penal Code)<sup>1</sup>, sexual harassment (section 345 of the Penal Code)<sup>2</sup>, sexual abuse (section 365B of the Penal Code)<sup>3</sup>, criminal intimidation (Section 483 of the Penal Code)<sup>4</sup> and domestic violence (section 23, Prevention of Domestic Violence act)<sup>5</sup>.

**1.2 WHAT ARE HUMAN RIGHTS VIOLATIONS?**

Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death. Fundamental rights are groups of rights recognized by the Constitution.

The Constitution of the Democratic Socialist Republic of Sri Lanka declares and recognises the Fundamental Rights of Citizens protected under the Laws of the Country<sup>6</sup>. Article 4(d) of the Constitution is directed at all organs of the government and aims to uphold the sovereignty of the people by respecting and securing their fundamental rights. These rights are protected through Chapter III of the Constitution and is outlined in Articles 10, 11, 12, 13, and 14 under the same Chapter and include the right to thought, conscience, and religious liberty (Article 10), protection against, cruel, inhumane, or humiliating treatment (Article 11), given equal protection under the law and not discriminated against based on race, religion, language, caste, sex, political stance, or place of birth (Article 12(1) and Article 12(2)), protected against unlawful arrests and detention and the right to a fair trial (Article 13 (1), Article 13(2) and (Article 13(3) and the presumption of innocence until proven guilty (Article 13(5), right to free speech, freedom of assembly, the right to join Trade Unions, etc., and the right to information (Article 14).

<sup>1</sup> 342. Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit "an assault".

<sup>2</sup> 345. Whoever, by assault or use of criminal force, sexually harasses another person, or by the use of words or actions, causes sexual annoyance or harassment to such other person commits the offence of sexual harassment and shall on conviction be punished with imprisonment of either description for a term which may extend to five years or with fine or with both and may also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person.

<sup>3</sup> 365B. (1) Grave sexual abuse is committed by any person who, for sexual gratification, does any act, by the use of his genitals or any other part of the human body or any instrument on any orifice or part of the body of any other person, being an act which does not amount to rape under section 363, in circumstances falling under any of the following descriptions, that is to say—(a)without the consent of the other person; (aa)with or without the consent of the other person when the other person is under sixteen years of age; (b)with the consent of the other person while on such other person was in lawful or unlawful detention or where that consent has been obtained, by use of force, or intimidation or threat of detention or by putting such other person in fear of death or hurt;(c)with the consent of the other person where such consent has been obtained at a time the other person was of unsound mind or was in a state of intoxication induced by alcohol or drugs.

<sup>4</sup> 483. Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of anyone in whom that person is interested with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound.

<sup>5</sup> Section 23 "domestic violence" means— (a) an act which constitutes an offence specified in Schedule I; (b) any emotional abuse, committed or caused by a relevant person within the environment of the home or outside and arising out of the personal relationship between the aggrieved person and the relevant person;

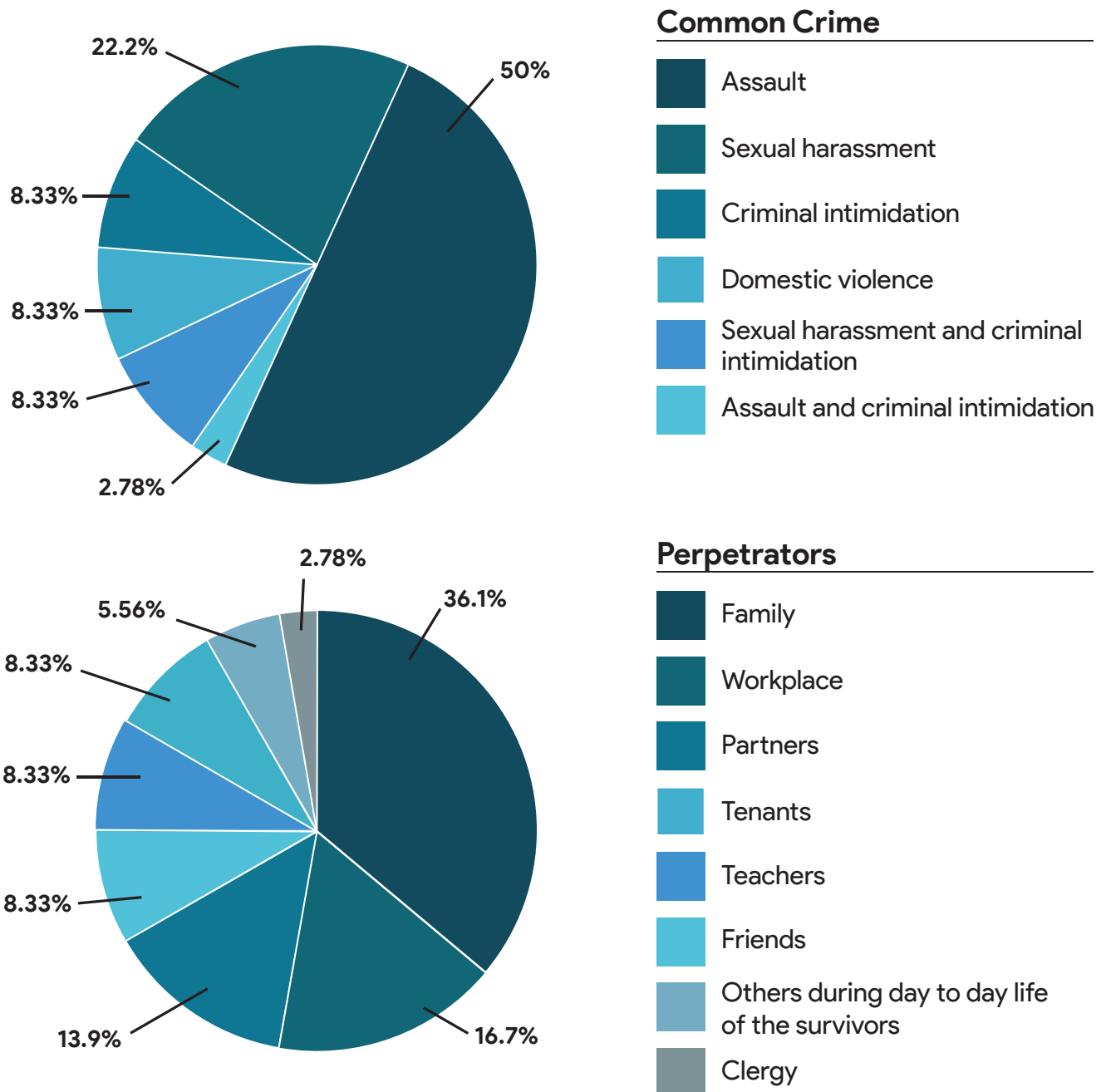
<sup>6</sup> "(Article 4(d)) of the Constitution of Sri Lanka: Fundamental rights that "shall be respected, secured, and advanced by all institutions of Government, and shall neither be abridged, restricted, or denied except perhaps in the manner specified provided by the Constitution".

## Section 5

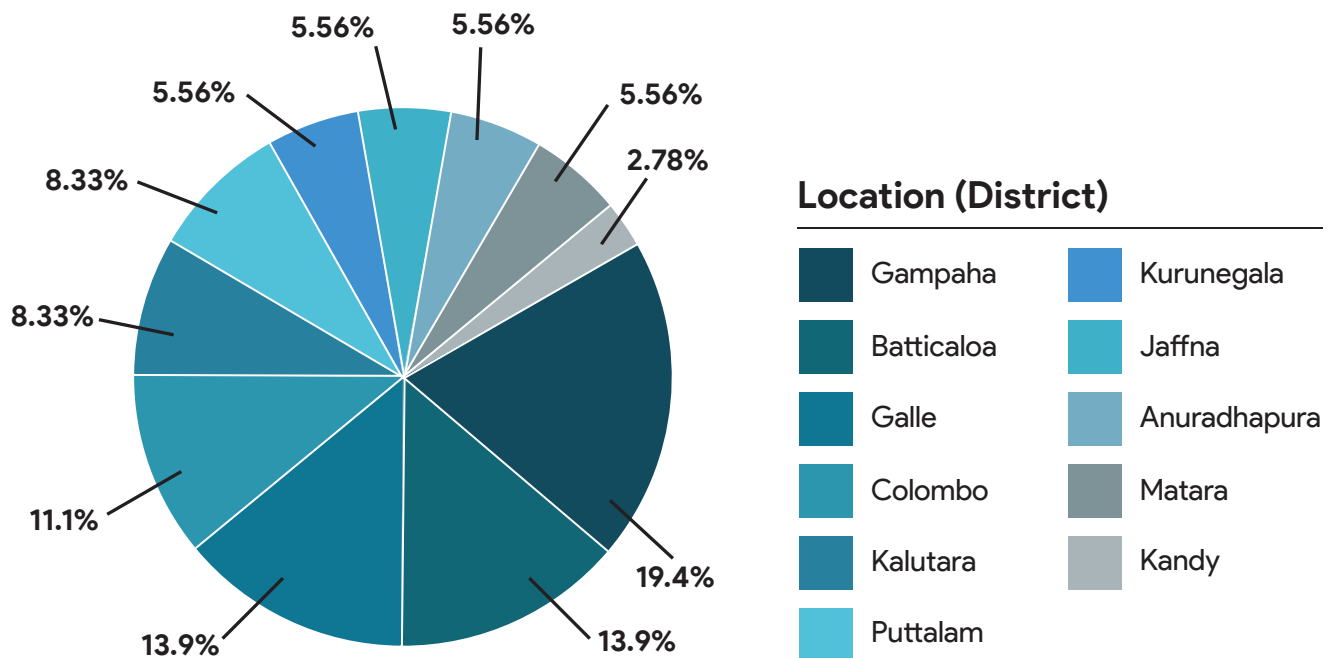
### ANALYSIS OF THE CASES

#### Chapter 1 : Common Crimes

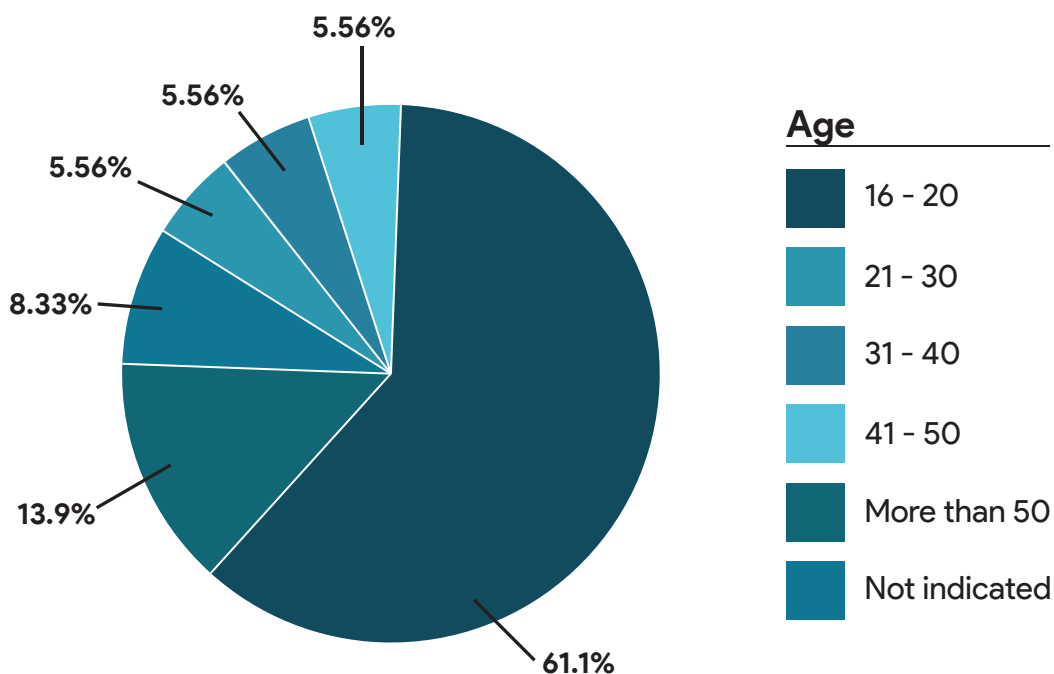
Out of the 80 cases gathered, 36 were identified to be common crimes. The perpetrators of these crimes were identified to be family members, fellow tenants, public officials, and teachers. The identified Common Crimes amongst the analysed cases include sexual harassment, sexual abuse, criminal intimidation, and domestic violence.

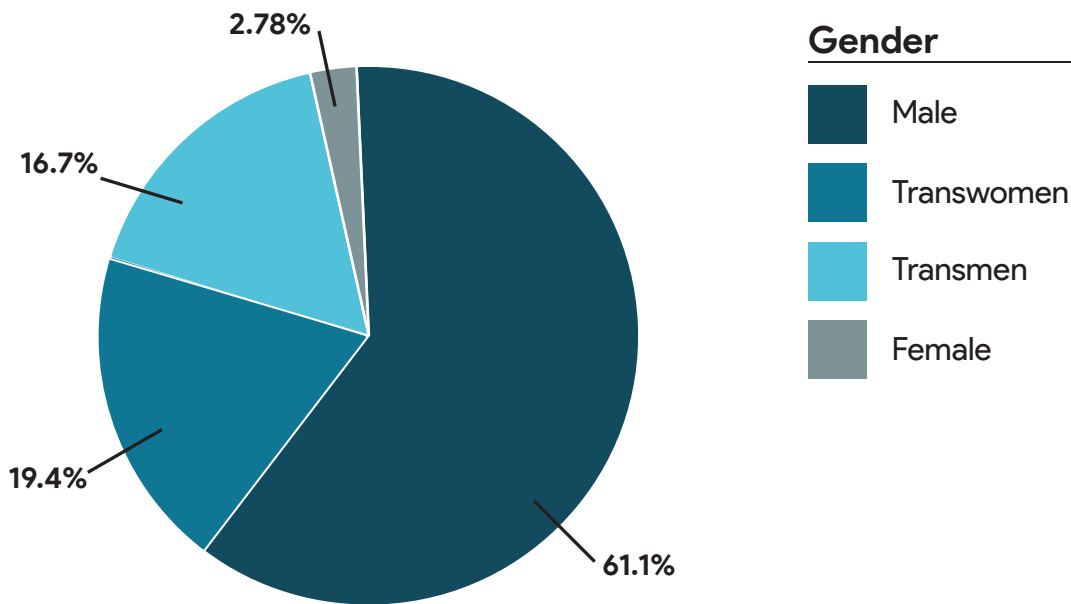


## 1.1 ANALYSIS OF COMMON CRIMES AGAINST THE COMMON DENOMINATORS OF THE SURVIVORS

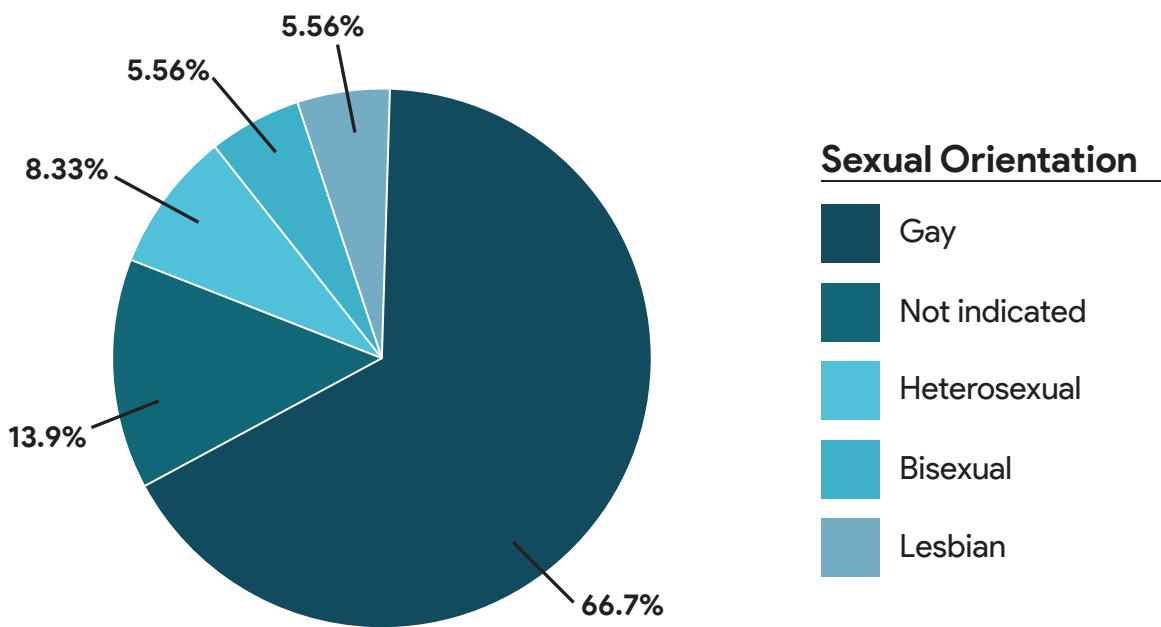


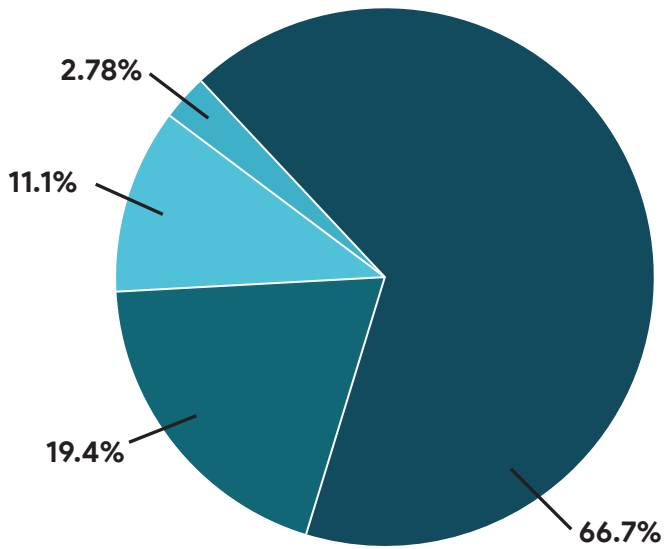
Please note that from the data available the major ethnic group has been subjected to these Human Rights Violations more than the minority groups. A shift in this balance could be observed should there be more statistics data available from the Northern and Eastern provinces.



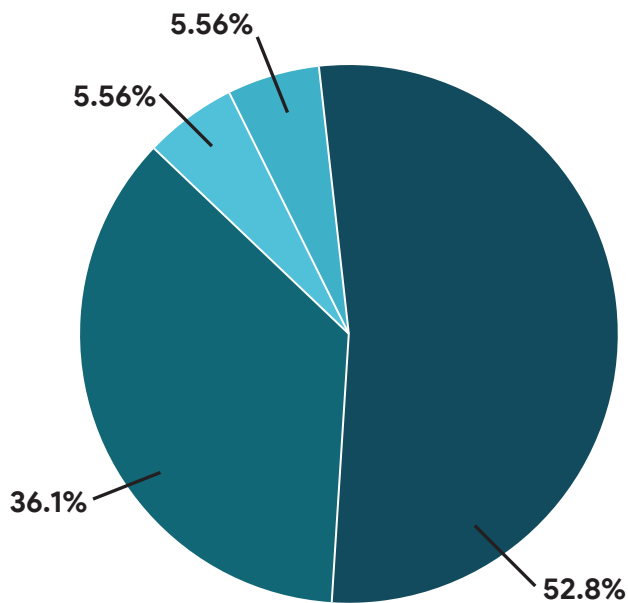
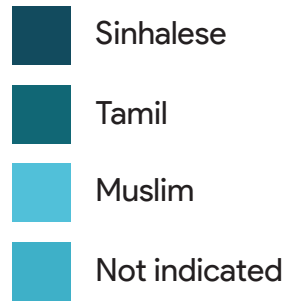


All male survivors categorized in this section have been described as having identifiable feminine features /characteristics or behaviours.

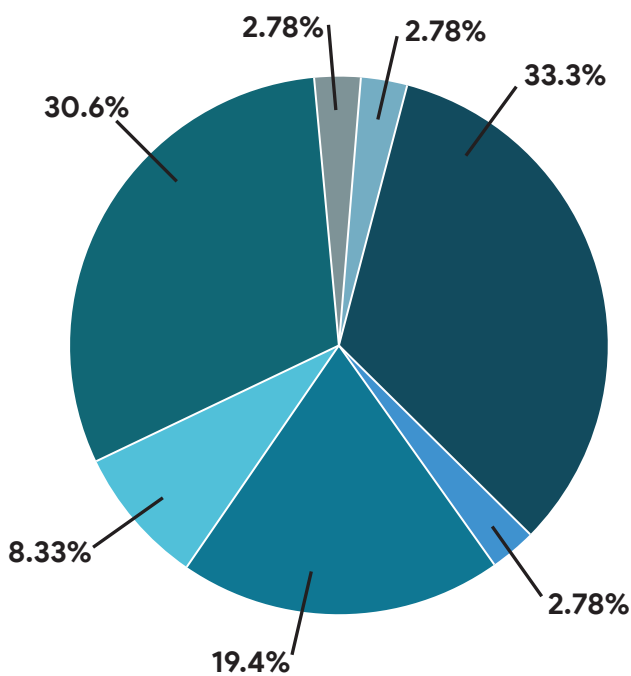
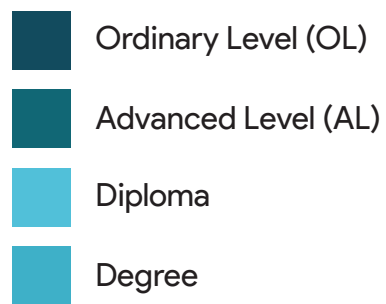




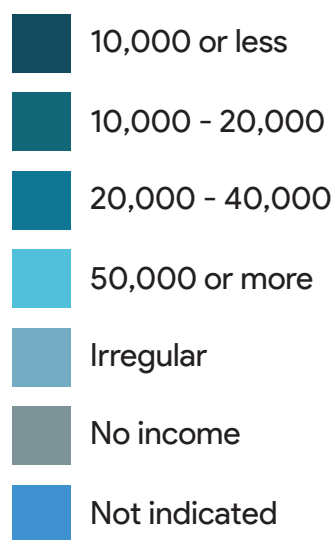
### Ethnicity



### Education

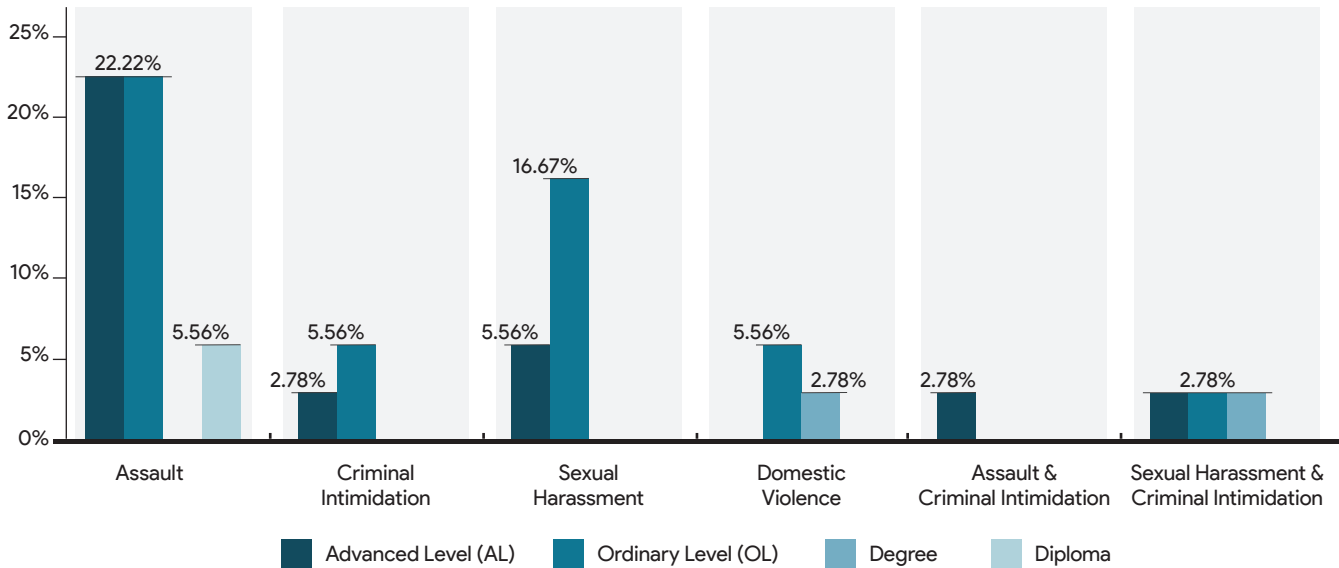


### Income in LKR



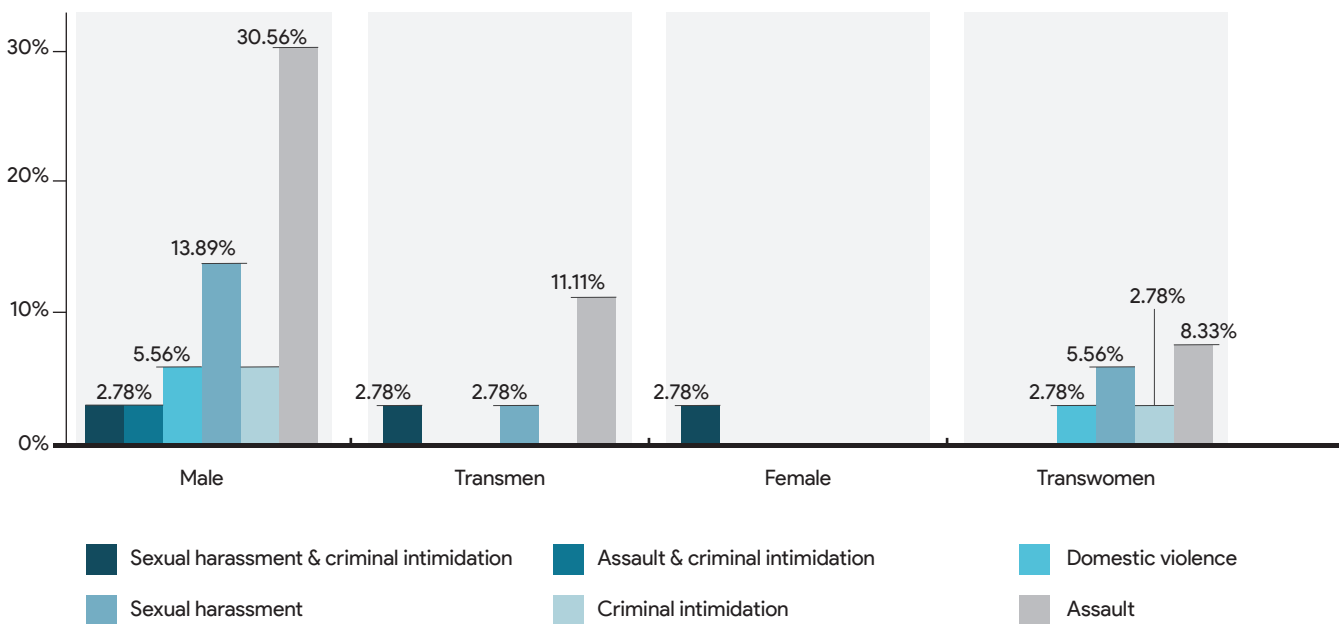
## 1.2 PREVALENCE OF COMMON CRIMES

### The correlation between education status of the survivors and common crime



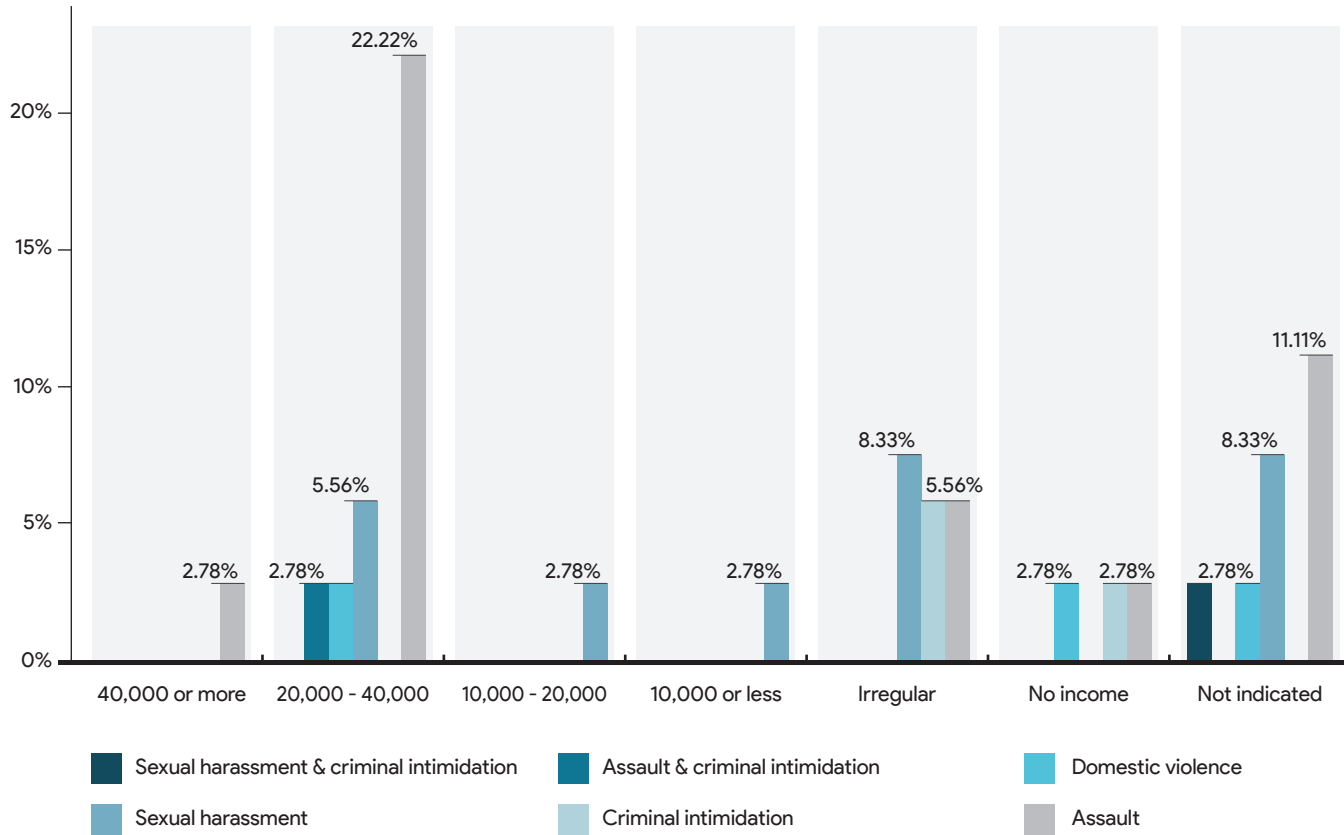
This graphical representation shows us that the most prevalent common crime is assault. The most susceptible groups are those with education level up to O/L and A/L.

### The correlation between gender of the survivors and common crime



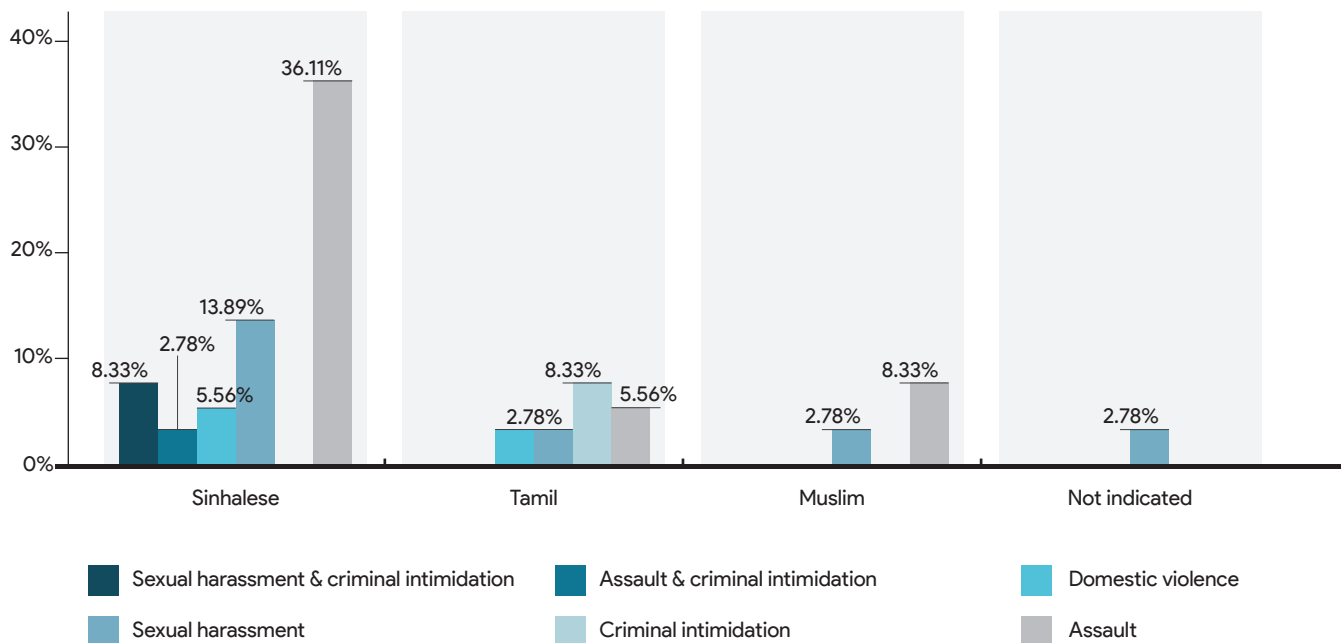
This graphical representation demonstrates that the most vulnerable gender group is male, and the most prevalent type of common crime is assault.

## The correlation between education status of the survivors and common crime



This graphical representation demonstrates that survivors with middle level income (20,000 - 40,000) are generally susceptible to Common Crimes mostly Assault.

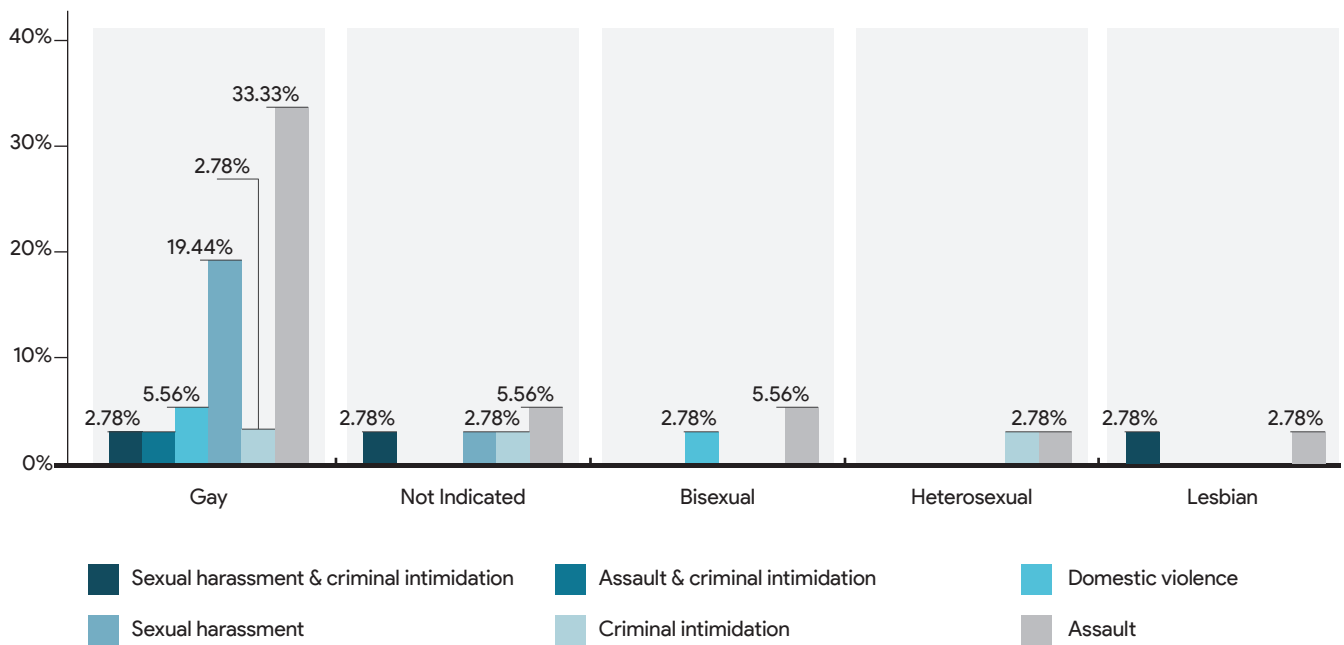
## The correlation between ethnicity of the survivors and common crime





Previous graphical representation which presents ‘the correlation between ethnicity of the survivors and common crime’ demonstrates that there is no direct correlation between the ethnicity of the survivors and the common crimes as the majority ethnic group seem to have been subjected to more common crimes due to their numerical majority. More common crimes committed against the minority ethnic groups maybe be observed should there be more data available from the Northern and Eastern provinces.

### The correlation between sexual orientation of the survivors and common crime



This graphical representation demonstrates that the most vulnerable are those who identify as gay and the most prevalent common crime is assault, followed by sexual harassment.

### 1.3 PERSONAL NARRATIVES

Some survivor testimonies are as follows;

A shop owner to whom, survivor T.N. went in search of a shop assistant job said,  
*“If I employ you, what would happen to my place? Get out of here.”*

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A security guard at a state bank addressing a survivor Z.A said, “උබට මොකටද ඔන් ගිණුම්, පලයන් භොන්හයා..” (*‘why do you need a bank account’ and called him a derogatory Sinhala term ‘ponnaya’*)

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K.S., a trans-woman, was kicked out of her residence on allegations of doing sex work,  
*“she (X, his wife) kicked me out of the house, but M didn’t leave me, He took care of me and looked after me. Meanwhile, X called me and said, “you’re a prostitute, you are a man, you are doing sex work”. Following this, I filed a case at P Police Station, and told the whole story to the Police. In the beginning, the Police supported me and called M and me for an inquiry and asked him what solution he proposed, and he agreed to pay me LKR 10,000 every month as maintenance. But he hasn’t paid me since.”*

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M.W.S.R was assaulted for merely making friendly conversation with a person,  
*“A friend and I arrived at the bus stop when we saw a handsome boy smoking a cigarette. I simply called out to him and said ‘hi’. He did not answer, simply smiled and went inside a shop in front of the bus stop. After a while, the boy came back out and walked towards us, and said, ‘let’s go upstairs. I followed him upstairs and suddenly a group of people attacked me. A lot of insulting words were also spoken. My friend came to my rescue, and we returned home afterward.*

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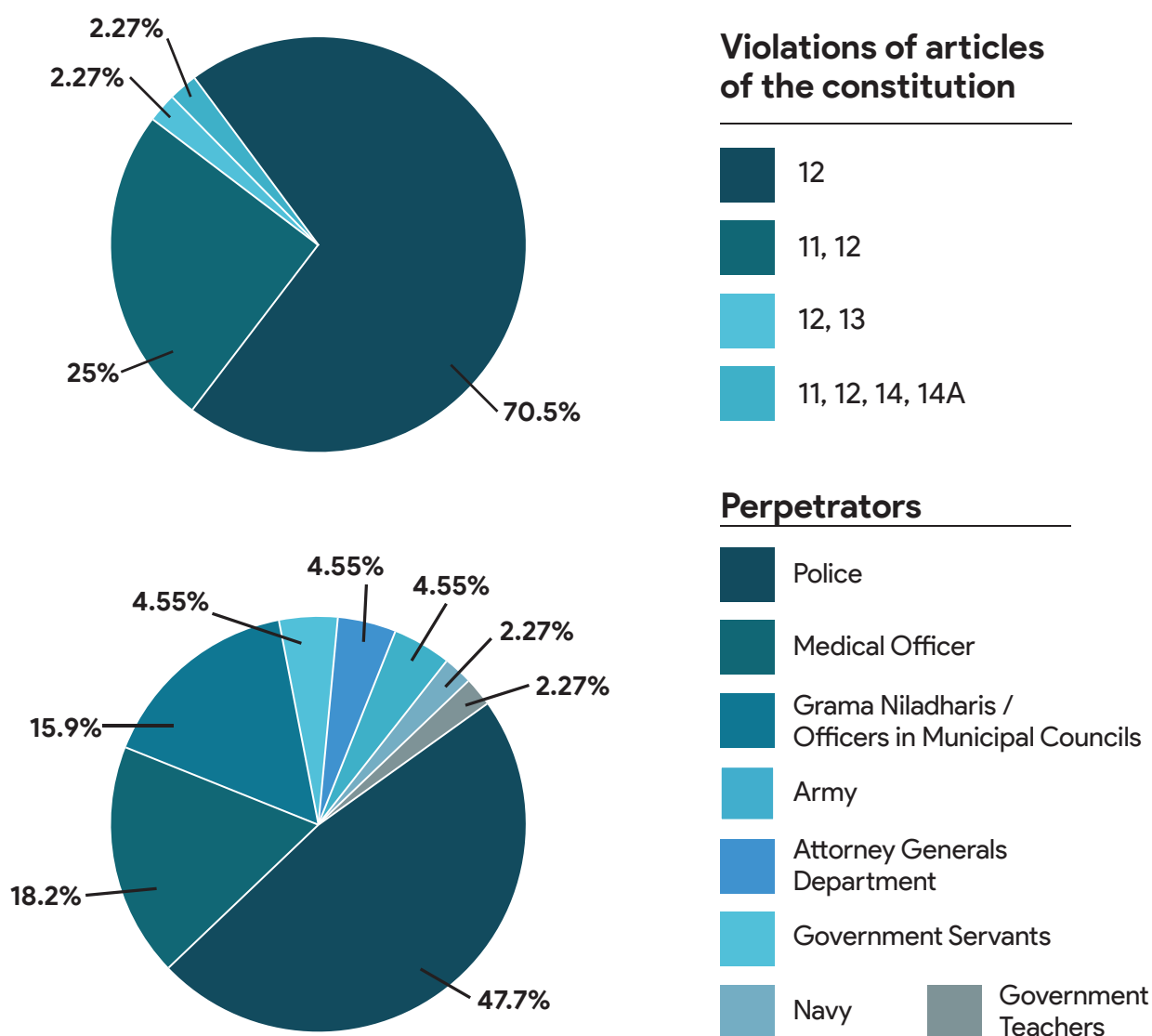
A.S was harassed by his crew members at his workplace on account of his gender identity, ethnicity and religion.

*“I was working under a supervisor who was a Muslim. I have a visible tattoo, when my supervisor found out that I am also Muslim he accused me of not abiding by our religion and purposely assaulted me every chance he got. These assaults were tactfully avoided on CCTV. I couldn’t take the harassment anymore so, despite this being my only stable source of income, I had to leave the job.”*

## Chapter 2 : Human Rights Violations

There were 44 fundamental rights violations amongst the 80 cases. Only 6 have been submitted to the Human Rights Commission (HRCSL) and the survivors of the rest had not consented to submission.

The human rights violations that were identified among the survivors include, violations of Article 11<sup>7</sup>, Article 12(1) & (2)<sup>8</sup>, Article 13<sup>9</sup>, Article 14<sup>10</sup> and Article 14A<sup>11</sup>.



<sup>7</sup> Article 11 of the constitution provides; "No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

<sup>8</sup> Article 12 (1) provides that, "All persons are equal before the law and are entitled to the equal protection of the law."

Article 12 (2) provides that, "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:

<sup>9</sup> Article 13 provides that,

"(1) No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.

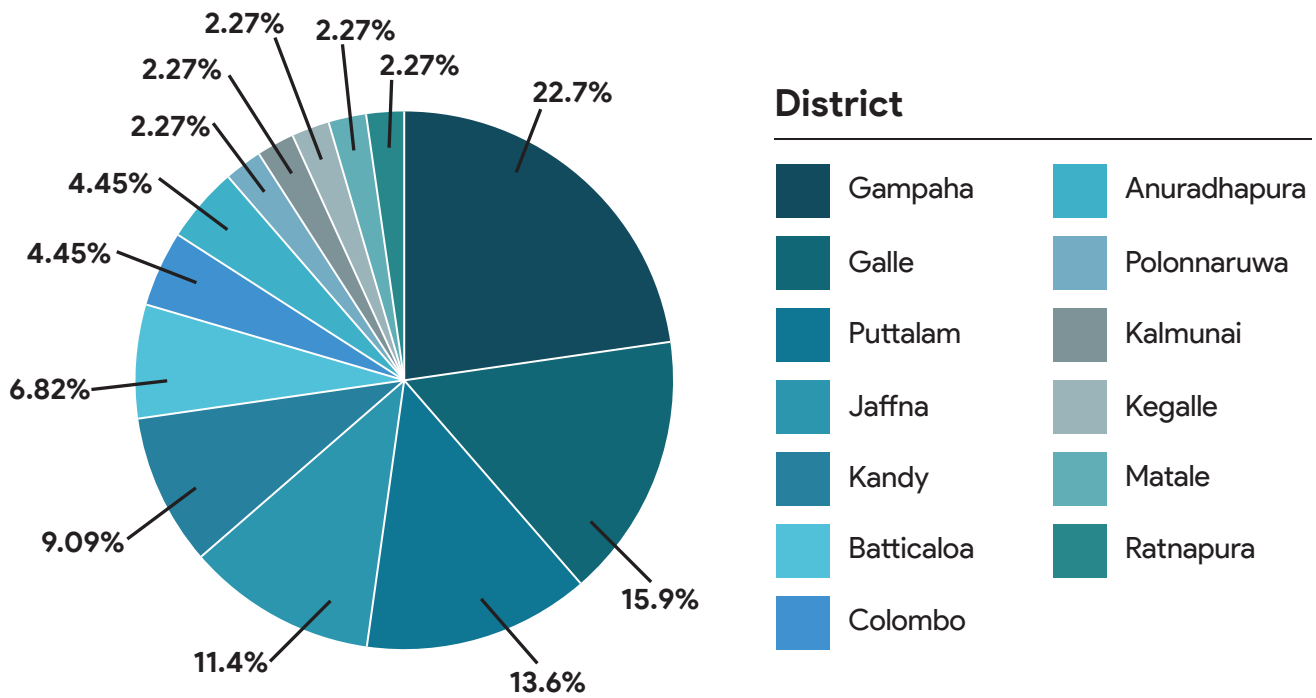
(2) Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of Freedom of thought, conscience and religion Freedom from torture Right to equality Freedom from arbitrary arrest, detention and punishment, and prohibition of retrospective penal legislation the nearest competent court according to procedure established by law and shall not be further held in custody, detained or of liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.

<sup>10</sup> Article 14 provides; "(1) Every citizen is entitled to – (a) the freedom of speech and expression including publication; (b) the freedom of peaceful assembly; (c) the freedom of association; (d) the freedom to form and join a trade union; (e) the freedom, either by himself or in association with others, and either in public or private.

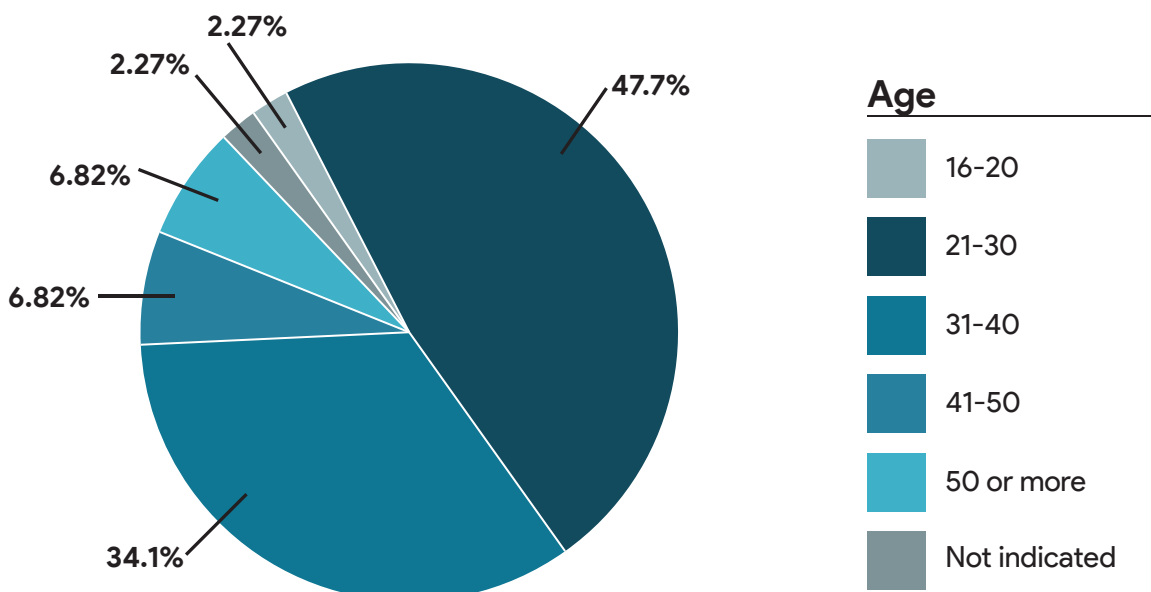
<sup>11</sup> Article 14A: "(1) Every citizen shall have the right of access to any information as provided for by law, being information that is required for the exercise or protection of a citizen's right.

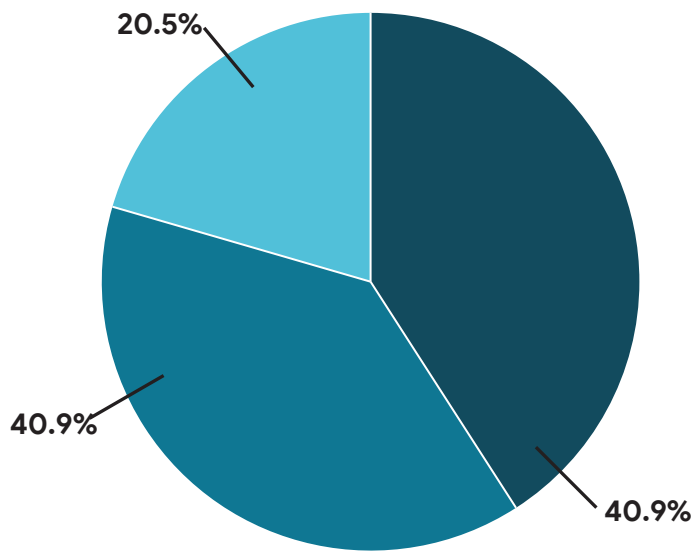
It was evident in the analysis, that all gathered cases were violations of Article 12 and in most cases, they are violations of Article 12 along with other violations.

## 2.1 ANALYSIS OF HUMAN RIGHTS VIOLATIONS AGAINST THE COMMON DENOMINATORS OF THE SURVIVOR

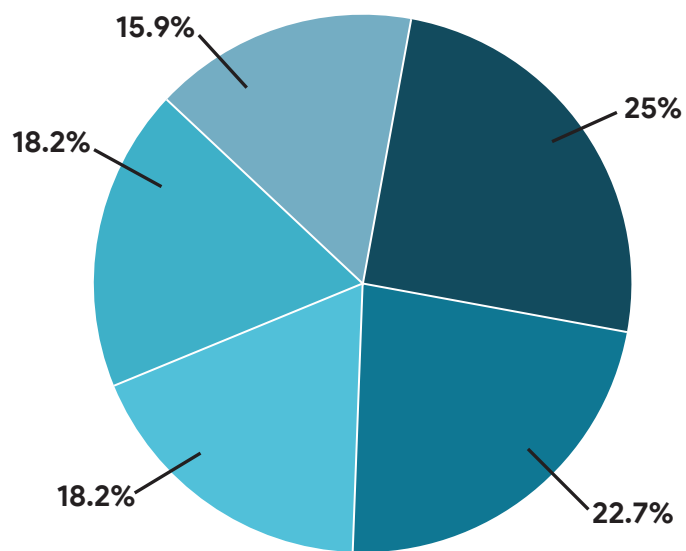
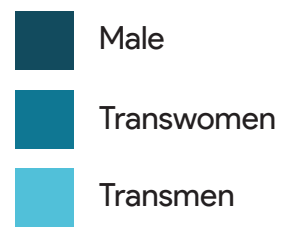


The above depiction may not be an accurate demonstration of the demographical locations due to the limited number of cases from the Northern and Eastern Provinces.

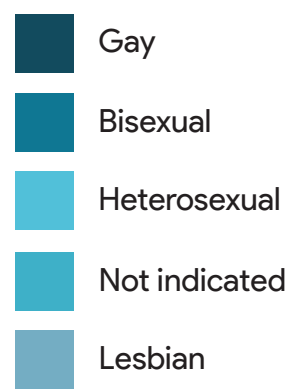




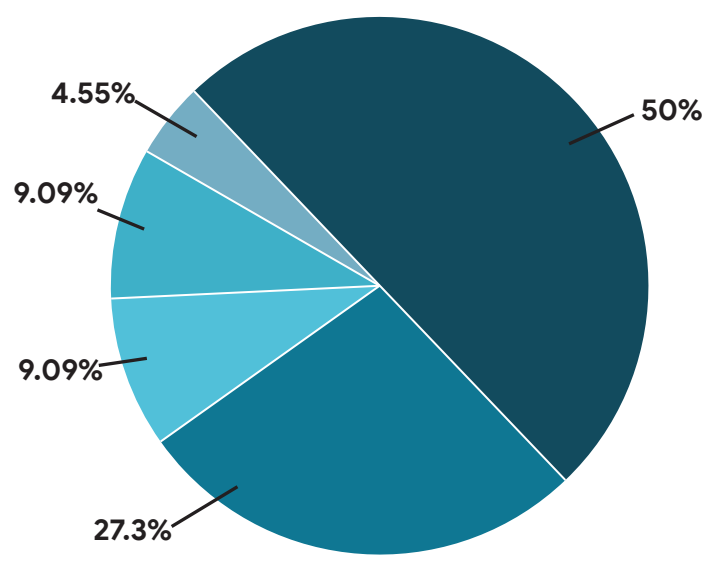
**Gender**



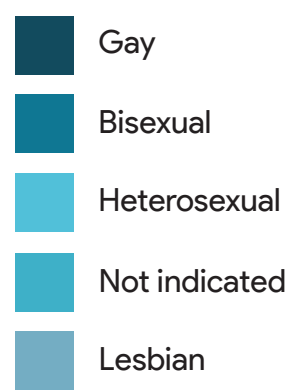
**Sexual Orientation**

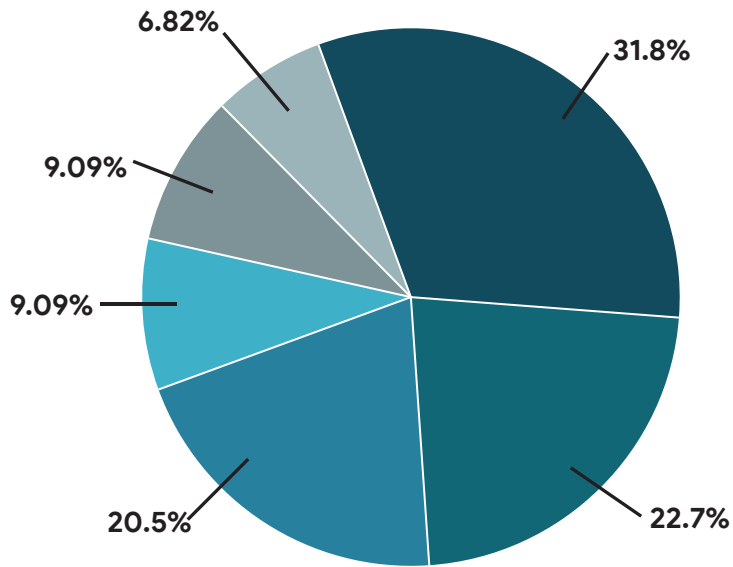


While there are no recorded females amongst the Survivors, there are Transwomen who have identified as Lesbians.

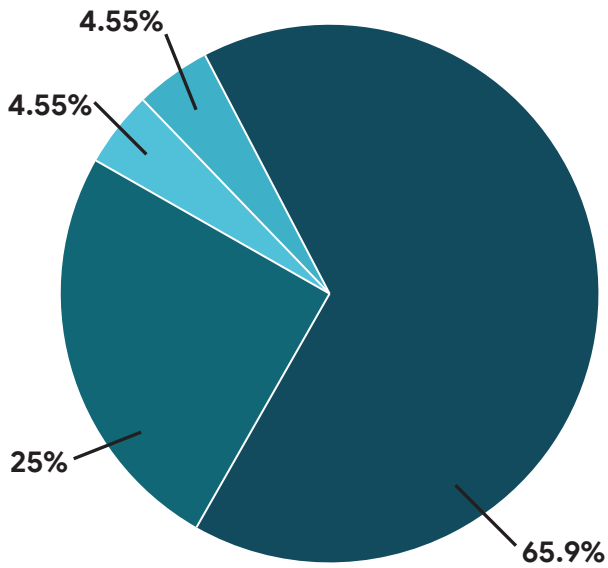
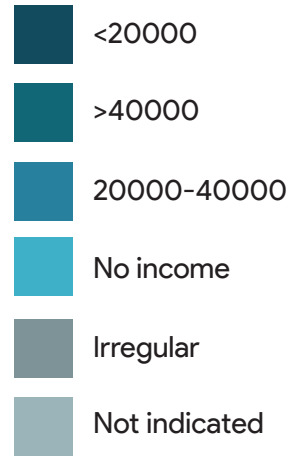


**Sexual Orientation**

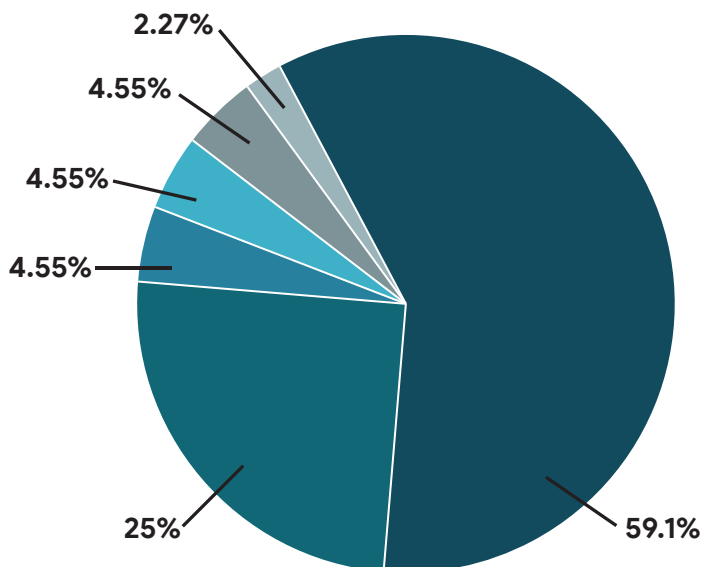
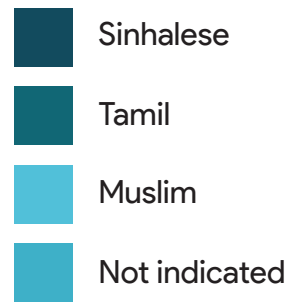




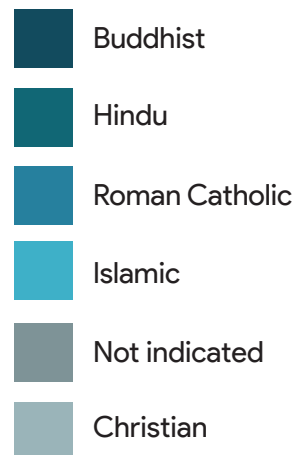
### Monthly income in LKR



### Ethnicity

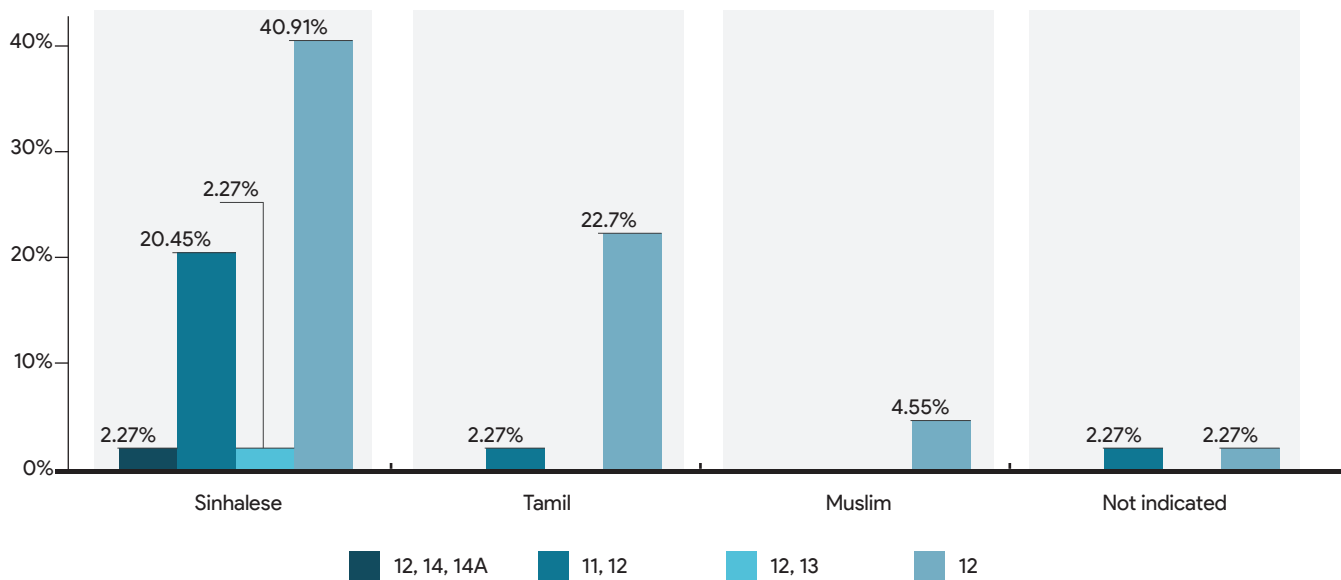


### Religion



## 2.2 PREVALENCE OF THE HUMAN RIGHTS VIOLATIONS

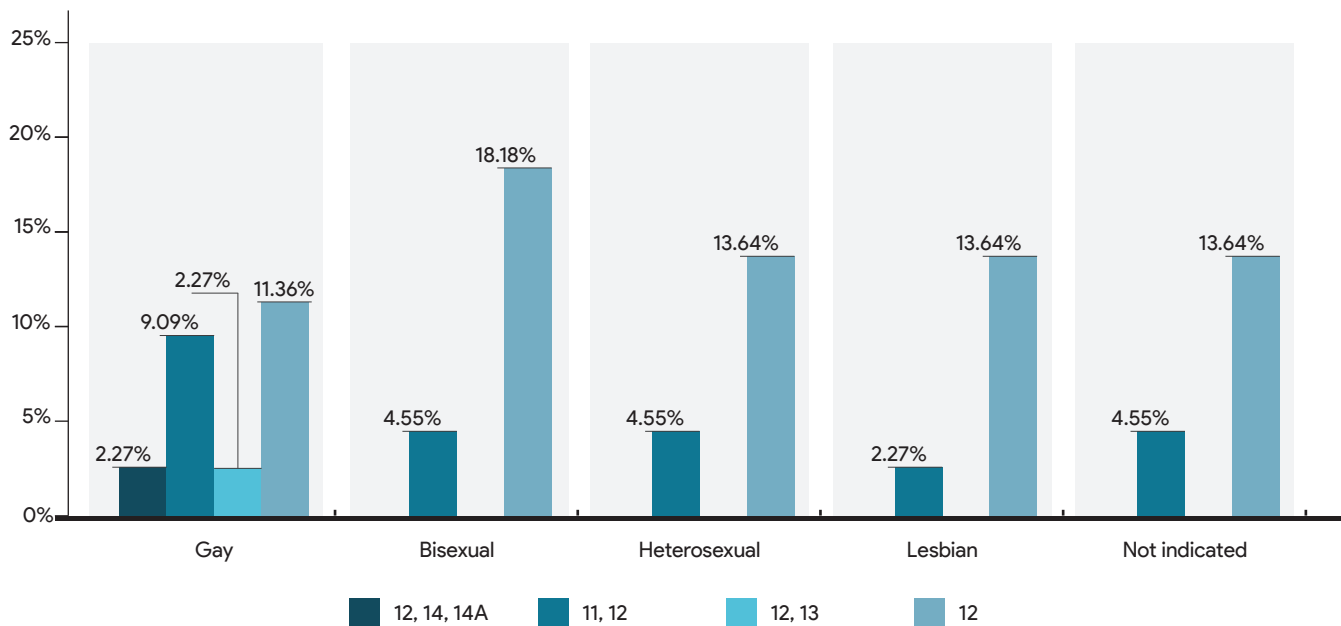
### The correlation between ethnicity of the survivors and HR violations



This graphical representation demonstrates that violations of Article 12 are the most common among all ethnic groups

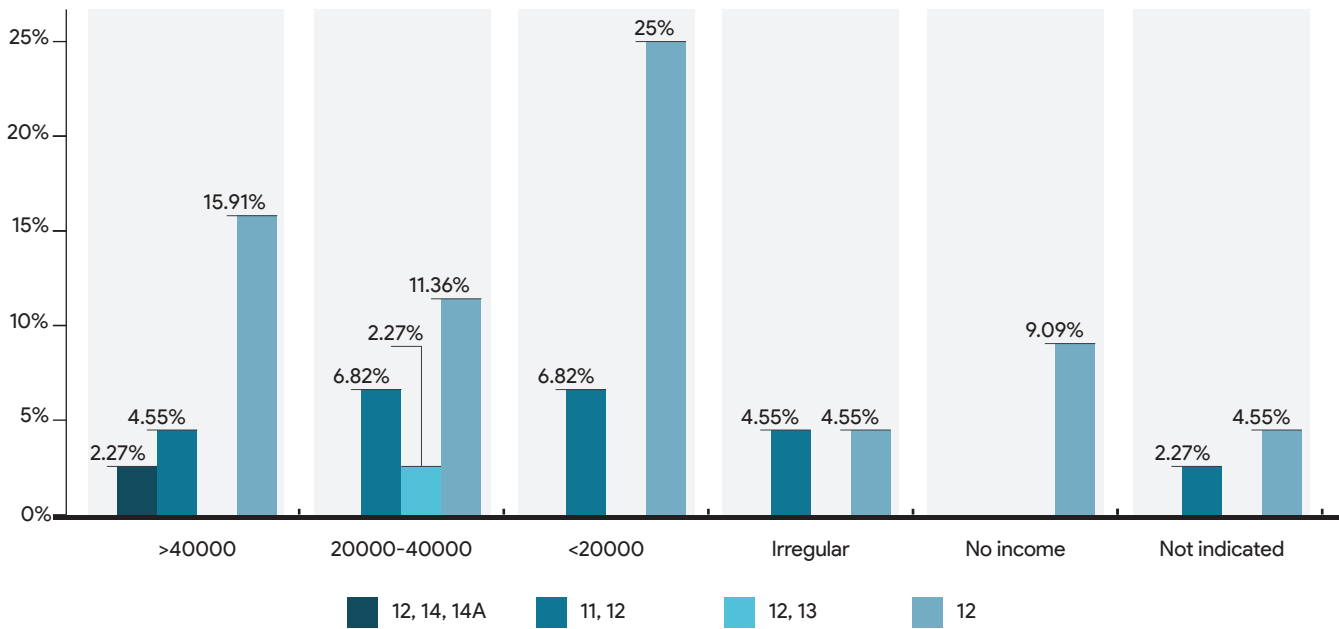
Note that despite the lack of data from the Northern and Eastern provinces there are still substantial Article 12 violations against Tamils.

### The correlation between sexual orientation of the survivors and HR violations



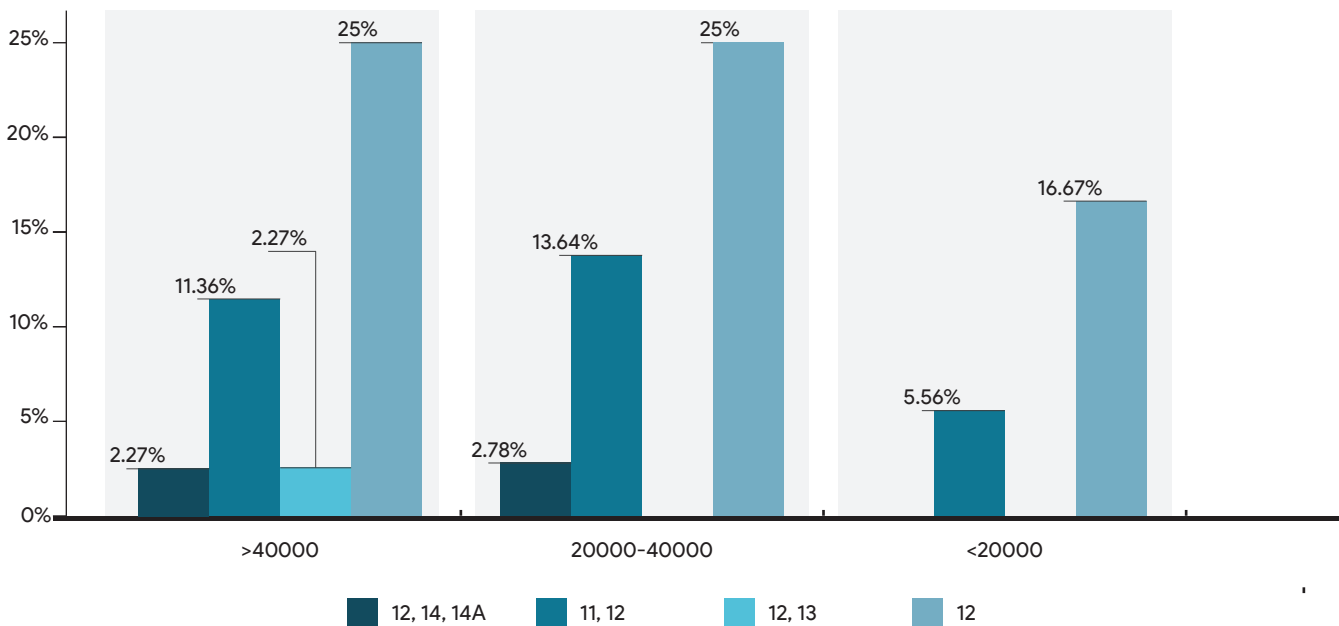
This graphical representation demonstrates that the most prevalent violation is Article 12 and the most vulnerable group in this regard are bisexual individuals.

## The correlation between income of the survivors and Human Rights Violations



This graphical representation demonstrates that survivors with the lowest form of income are susceptible to Human rights violations, the most prevalent being Article 12 violations.

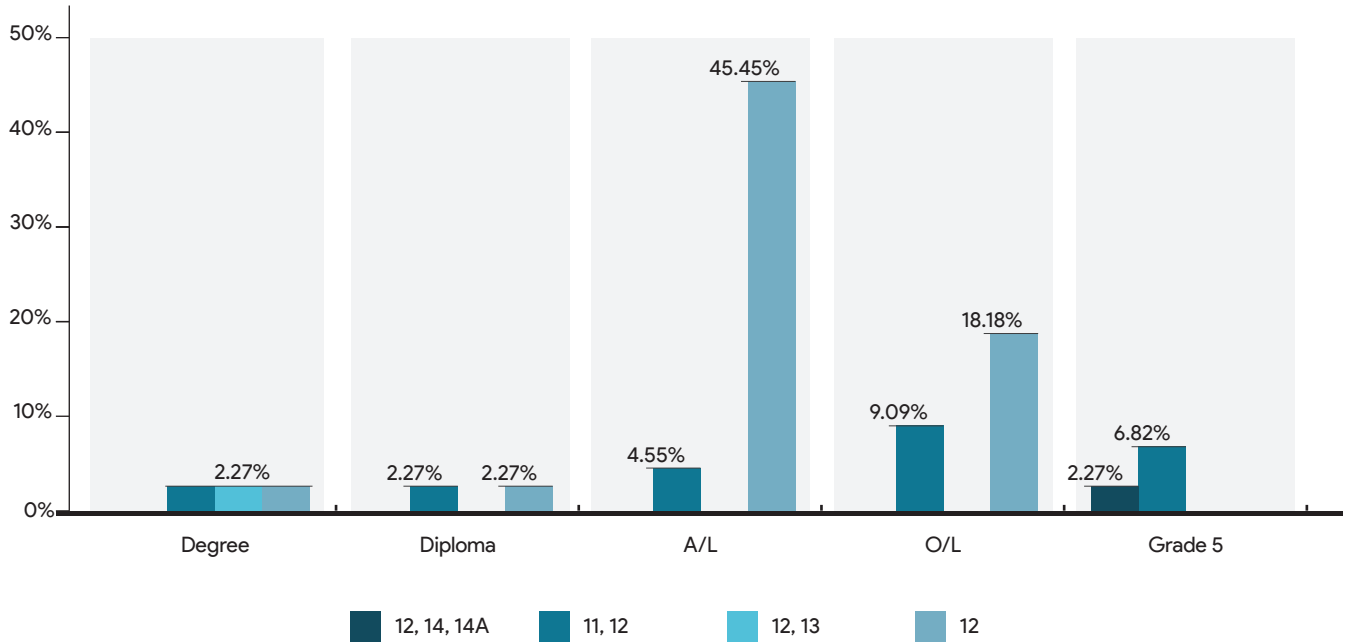
## The correlation between gender of the survivors and HR violations



This graphical representation demonstrates that the most vulnerable gender groups to be male and Transwomen and the most prevalent type of HR violation is Article 12 violations.



## The correlation between education status of the survivor and HR violations



This graphical representation shows that the most prevalent violation is Article 12 and the most susceptible group is those with Advanced Level education status.

## 2.3 PERSONAL NARRATIVES

Some survivor testimonies are as follows;

M.K. was discriminated against by Police officers who abused their power but since he was not out about his sexual orientation and due to the fact that he did not feel safe with those enforcing the law he did not consent to submit his case to the HRCSL.

*“...They (Police officers) made statements that alluded to the fact that I may be a homosexual man looking to engage in a sexual encounter under the bridge, they made statements like “are you here to eat Popsicles”.*

*...During this time a senior official came into the station and asked one of the officers “how many cases today” the other officer said to him that they have a total of 6 cases, which indicated to us that they were simply attempting to fill a quota. The next morning, we were still not allowed to leave and had to wait until around 6.45 p.m. at the station and then were abruptly released claiming there are no more questions.”*

K.K. was discriminated against by Police officers abusing their power and called derogatory terms due to their sexual orientation.

*“...They asked me if I was soliciting sex, and despite my saying that I was there to meet a friend and amidst my protest they arrested me..... **They harshly claimed that “men like this who are unattached are only here to chase after boys”** and proceeded to insult homosexual men.”*

S.G. and their friend were taken to the police station because according to the Police Officer “කඔ වැඩි” (‘you talk too much’). This survivor was hesitant to submit their case to the HRCSL because they were not out with their sexual orientation/gender identity.

*...“But the policemen talked to me and insulted me and my friend referring to us as “පොහොසයෝ”. (Derogatory Sinhala slang referring to a homosexual person) First, we were accused of being on the beach to pay for sex., then we were called as robbers and further insulted and they arrested us.”*

## Section 6

### KEY FINDINGS

1. The most prevalent Common crime that the survivors have been subjected to is assault (50% of the survivors).
2. Amongst the 36 Common crime cases analysed **only 5 survivors have sought recourse** -13.88% (the only form of recourse recorded is complaints made to the police) while two survivors wished to seek financial and legal support respectively. And **only one (2.77%) of those who have sought recourse** has declared that they **were satisfied** with the justice they received (S.Z. wanted to retrieve his national identity card which was confiscated by the police during an arrest and it was later returned to him upon further complaining to the police).
3. Based on the testimonies of the survivors (both of Common crimes and Human Rights violations) most of them were not too keen to complain or go to the authorities due to various socio-economic reasons which included;
  - Fear of being discriminated against due to their sexual orientation/gender.
  - Fear of family members/employers finding out about their gender and sexual orientation in the event of pressing charges.
  - Pressure to keep their stories to themselves to prevent being ridiculed by their next of kin.
  - Fear of being oppressed further.
  - It is a great deal of procedural inconvenience that may result in no favourable justice.
4. 40% of the survivors of Common Crimes were **not out** to the public.
5. The majority of the survivors of Common Crimes were found in the Gampaha district with a percentage of 19.44%. *(not a conclusive deduction due to the limited number of cases from the Northern and Eastern provinces)*
6. The most prevalent age group of survivors of Common Crimes were aged between 21-30 years old.
7. The most prevalent gender of survivors of Common Crimes was male (61.1%)
8. The most prevalent sexual orientation of the survivors of Common Crimes was gay (66.7%)

9. The most prevalent ethnicity amongst the survivors of Common Crimes was identified to be Sinhalese (61.1%) *(not a conclusive deduction due to the limited number of cases from the Northern and Eastern provinces)*
10. A majority of the survivors of Common Crimes were only O/L qualified persons (47.2%)
11. A majority of the survivors of Common Crimes earn minimum wage as they fall within the income bracket 20,0000-40,000LKR.
12. The perpetrators of Common Crimes were identified to be family members (36.1%), fellow tenants (8.33%), teachers (8.33%), colleagues at the workplace (16.7%), romantic partners (13.9%), friends (8.33%), clergy (2.76%), and others during day to day life of the survivors (5.56%) ,who were ashamed/afraid to be associated with the survivors due to the perception of their sexual orientation and or gender identity.
13. Out of the 44 Human Rights Violations, only **6 (13.63%) have thus far been submitted to the HRCSL, as the survivors of the rest did not consent to submission.**
14. 50% of the survivors of Human Rights Violations are **not out** to the public.
15. The most common form of fundamental rights violation is the violation of Article 12 (100%), followed by Article 11 with a percentage of 27.2%, Article 13 with a percentage of 6.81%, and Article 14 with a percentage of 4.54%
16. The most prevalent age group of survivors of HR violations were aged between 21-30 years old.
17. The most prevalent gender of survivors of HR violations was male (40.9%)
18. The most prevalent sexual orientation of the survivors of HR violations was gay (25%)
19. The most prevalent race/ ethnicity amongst the survivors of HR violations was identified to be Sinhalese (65.9%) *(not a conclusive deduction due to the limited number of cases from the North and East).*
20. The majority of the survivors of HR violations were A/L qualified persons (50%)
21. The majority of the survivors of HR violations earn minimum wage as they fall within the income bracket <20,0000LKR.
22. The perpetrators of HR violations were identified to be Police (the majority at 47.7%), Medical sector (18.2%), Army (4.55%), Navy (2.2%), Grama Niladharis/officers in Municipal Councils (15.9%), Government Teachers (2.2%), Attorney General's Department (4.55%), and other Government Servants (4.55%).

## Section 7

# RECOMMENDATIONS

Reflecting on the deductions of the study and with careful consideration towards the socio-economic status of the survivors, the procedural and legal complications, social standards, and ingrained social stigmas, recommendations are made to safeguard rights and ensure the just and equitable treatment of the LGBTQ community. These recommendations are directed toward the survivors, the HRCSL, civil society organizations, public officials, and the Government:

## GENERAL RECOMMENDATIONS

### 1. Legal Reform :

Same-sex relationships are criminalised in Sri Lanka, therefore the continued discrimination and harassment they are subjected to by law enforcement and state officials will continue to be justified. While there has been a progression in gender recognition with the introduction of the gender recognition certificate (of which however most public officials are unaware), with the rigid laws criminalizing them LGBTQ persons will forever struggle to be treated equally and accepted. Therefore, only the complete repeal of these draconian laws, including Section 365 and section 365A<sup>12</sup> of the Sri Lankan Penal Code, 1833<sup>13</sup>, will ensure the safeguard of the rights of these individuals and ensure that the public authorities do not abuse their power and discriminate against the liberties of these individuals.

### 2. Encourage survivors to seek litigation :

Challenging discriminatory actions is an important part of legal reform. Discriminatory actions can be challenged in the Supreme Court in terms of the fundamental rights provided for in the constitution. Actions can also be challenged in the Court of Appeal using its writ jurisdiction. For example, EQUAL GROUND and seven others including the Executive Director of the Centre for Policy Alternatives, filed a petition in the Court of Appeal of Sri Lanka, seeking a Writ of Prohibition against the conducting of a training program for the police where malicious, erroneous and discriminatory remarks were made about the LGBTQ community.

Therefore, survivors should be encouraged to go to court with their grievances. This however requires individuals to have faith in the legal system of the country and the lack therein has led to survivors refusing to vocalize the discriminations they are faced with.

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<sup>12</sup> Section 365A, which criminalizes 'acts of 'gross indecency' in public or in private, with a penalty of up to two years' imprisonment and/or a fine upon conviction, is applicable to consensual same-sex sexual acts regardless of the gender of those involved. Section 365A originally criminalised "any act of gross indecency" between males. However, in 1995, the provision was amended to replace the term "male person" to "person", thereby expanding the its scope and bringing women who engage in consensual same -sex sexual conduct acts within its ambit.

<sup>13</sup> Violations under this section can result in up to ten years in prison and a fine. The Penal Code was enacted during colonial rule and has been subjected to several amendments since.

### **3. Educate LGBTIQ individuals about their rights :**

LGBTQ individuals in Sri Lanka need to be educated on the various laws and constitutional provisions that they can rely on when they are treated differently due to their gender or sexual orientation. Although the deductions of the Data Brief do not indicate a substantial number of crimes or violations from places outside of the Western Province, it is important to devise mechanisms to educate individuals from all around the island on their rights and what they can do in case of a violation. While LGBTIQ persons in Colombo may have easy access to support services, members of the community in other parts of the island have had difficulties in accessing the same services. Therefore, these awareness/education programs must be conducted in Tamil and Sinhala in other parts of the country as well, where a majority of the marginalized are located. Accurate legal information should be conveyed to members of the community. It could be in the form of a document that can be handed over to them in medical clinics, awareness programs, etc. This document can contain all the laws and policies relating to LGBTQ persons in Sri Lanka simplified in all three languages.

## **SPECIFIC RECOMMENDATIONS**

### ***Recommendations to the Government***

#### **4. Reform within educational institutions (schools and higher education institutions) :**

8.33% of perpetrators of Common Crimes and 2.2% of perpetrators of HR violations are teachers and lecturers of public and private educational institutions. This includes discrimination and bullying in educational institutions. Educational institutions should develop strong anti-bullying policies to safeguard LGBTQ students. Further, they need to implement sensitizing programs with students and teachers on issues regarding gender identity, sex education, sexual and reproductive health rights, and sexual orientation. This will help build a safe space for children who are struggling with their gender or sexual identity to open up about their issues and seek necessary guidance. It will further enable teachers to be more empathetic and understanding about these sensitive topics and handle the situation better.

#### **5. Share experiences and hardships of LGBTIQ persons, with public and government officials (including public medical officers) to sensitize them regarding their problems :**

Based on the experiences shared by the survivors it is quite apparent that the public and government officials who are sometimes the perpetrators of these violations lack empathy and while it is vital to educate them about gender identity and sexual orientation it is equally important to realize that an officer will act on his will if he lacks empathy towards his peers. Therefore, education programs designed for public officials and law enforcement personnel should include education on human values such as non-violence and right conduct.

## ***Recommendations to the HRCSL***

### **6. Maintain a log of the key violations, key perpetrators, and the nature of survivors in reference to LGBTQ individuals :**

A statistical record of the key violations, the key perpetrators and the nature of survivors amongst the cases submitted to the HRCSL will assist civil society organisations to reach out the grassroots and support address the striking issues amongst LGBTQ individuals. This will also help civil societies both local and international to get a broad idea of the socio-economic status of the community in Sri Lanka. This therefore will become a tool in the reform and development of community-based activities in the future.

## ***Recommendations to the Police and Military***

### **7. Include sexuality and gender training into training sessions for police officers and members of the armed forces :**

47.7% of perpetrators of HR violations are committed by the Police, while 4.55% are committed by the Army and 2.2% are committed by the Navy. Thus, simply having laws and policies in place is not adequate, it is important to uphold them. To do this, the law enforcement authorities should be made aware of these laws and policy decisions and the intricacies of gender and sexual identity. Many survivors revealed that the police officers were unaware of the gender identification certificate, demonstrating that there is a flaw in the system. An interview with a police officer from the 'Hulftsdorp' Police Station regarding the treatment of LGBTQ individuals revealed that Police officers are not provided sexuality and gender awareness training during departmentally mandated training sessions. Public officials who are responsible to enforce the law to treat all citizens equally should be provided proper education on LGBTQ individuals and the discrimination and challenges they face in our society.

### **8. Share experiences and hardships of LGBTQ persons, with for police officers and Members of the Military to sensitize them regarding their problems :**

Based on the experiences shared by the survivors it is quite apparent that the police and members of the military specifically the Army and the Navy lack empathy and have committed crimes or violations against the survivors due to certain prejudices they hold regarding members of the LGBTQ community. While it is vital to educate them about gender identity and sexual orientation it is equally important to realize that an officer will act on his will if he lacks empathy towards his peers. Therefore, education programs designed for Police officers and the Military should include education on human values such as non-violence and right conduct.

## ***Recommendations to Civil Society organisations***

### **9. Create social media awareness on LGBTQ helplines :**

Various civil society organizations such as Equal Ground have helplines set up to support LGBTQ individuals in times of need and the information about these helplines has to be publicized to those in all parts of the island and the best way to put this in motion would be to use social media platforms abundantly used by young generations including LGBTQ persons such as 'Facebook', 'Tiktok' and 'Instagram'.

### **10. Create an LGBTQ help app :**

This is a suggestion directed toward civil societies. It is important to have a helpline and people they can reach out to for support and guidance in times of need. Civil society Organizations that provide legal assistance to LGBTQ individuals can be made popular via social media. The app can be developed in such a way that it contains contact information for legal, economic, and psychological support for individuals in need and enable survivors to enter an issue and receive immediate guidance. Such mechanisms of easy assistance would ensure immediate assistance to those in need, at all times, regardless of where the violation or discrimination has taken place.

### **11. Create a support network between parents, families, and friends of LGBTQ individuals :**

The key findings demonstrate that most survivors refused to go to the authorities about the crimes and violations committed against them due to the fear of shaming their families. The various social stigmas against these individuals need to be systematically reformed to achieve justice for these individuals. While this is not a process that can be put into place overnight, it is however possible to help families with LGBTQ persons understand and be desensitized. It can be proposed to create a network where family members of LGBTQ persons can reach out to family members of other LGBTQ persons who have already gone through the emotional and social issues of their family members and help them form a friendship, for advice and share each other's experiences, which will help them understand what their family members are going through and take a sympathetic approach.

## ***Recommendations to Private Sector***

### **12. Educate the workforce :**

The survivor testimonies demonstrated that most LGBTQ individuals have been subjected to discrimination and subject to crimes against them at their workplaces. Further, some survivors have also been passed on for job opportunities simply due to their gender or sexual orientation. Thus, strategically planned sensitization programs for both the private and public sectors would be imperative. These programs can include an open discussion of gender and sexuality issues and the challenges that come with them. This will ensure the protection of the rights of LGBTQ individuals and enable them to have better access to employment opportunities both within and outside public/private organizations.



## ***Recommendations to Survivors***

### **13. Approach the Authorities in reference to HR violations and common crimes committed against the survivor and encourage other LGBTQ individuals to do the same :**

While there are certain legal mechanisms available to support survivors against discrimination committed against them, it is important to seek these legal reliefs for their benefit. It is important to have a record of such incidents to build advocacy for policy changes and legal reform. Therefore, all survivors must recognise that their story will help other members of their community to avoid injustice.

### **14. Inform the police and public officers and other perpetrators that their actions are violations of the survivor's sovereignty and therefore the survivor has a right to take legal action against them :**

It is important to make public officers aware that the survivor is aware of their Human Rights and that they will not stand for discriminations against them based on their Gender Identity or Sexual Orientation. This might urge perpetrators to think twice when committing the same offenses or violations against other members of the community.

## **Section 8**

## **CONCLUSION**

To conclude, the objective of the Data Brief was to quantify the violations faced by the LGBTQ community in Sri Lanka based on the 80 cases collected from August 2021-February 2022.

The analysis shows that most LGBTQ persons are reluctant to go to the authorities (e.g. Human Rights Commission of Sri Lanka or the Police) due to existing penal laws and various social stigmas that continue to exist in society. These stigmas may include inaccurate perceptions that LGBTQ persons are psychologically unwell or that it is a 'trend' or 'lifestyle' that conflicts with Sri Lankan culture.

The analysis found that LGBTQ individuals not only get discriminated against at the public level but also have to face hurdles in their private circles (friends and family).



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