

Report on Sri Lanka- Universal Periodic Review – Second Round (May 2008)

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Introduction

This report deals with the situation of **sexual rights** in Sri Lanka, making special references to **reproductive rights, rights of lesbians, gays, bisexual, transgender people, people living with HIV/AIDS, sex workers and sexual rights of women** in general.

1. Sri Lanka became a member of the UN Human Rights Council at its inception in 2006, and even prior to that was a member of the UN Human Rights Commission.
2. Sri Lanka is an island nation that has been devastated by over thirty years of a separatist ethnic conflict. Discrimination against the minority Tamil community was the critical factor that sparked off the conflict in the late 1970s, and since then the conflict between the government and the Liberation Tigers of Tamil Eelam (LTTE) has escalated. Although there have been several different attempts to end the conflict and bring about a peaceful resolution of the issues of discrimination and violence, these have not been successful. In January 2008, the government unilaterally withdrew from the Ceasefire Agreement facilitated by the Norwegian government and in place since 2002. The offensive launched by the government forces against the LTTE in the East and North of the island since mid-2006 has had disastrous consequences in terms of civilian life, leading to extensive displacement and suffering for hundreds of thousands of Sri Lankans. While Tamils are the vast majority of those affected by the conflict, the violence affects other communities as well.
3. Many democratic institutions and freedoms have been eroded as a result of the conflict. Emergency laws have been in place for extended periods of time since 1983, and the Prevention of Terrorism Act of 1979 also paves the way for a range of human rights abuses in the name of fighting terrorism and strengthening 'national security'. There are systematic abuses of civil and political rights, such as extra-judicial killings, disappearances, abductions and dumping of bodies in public places, that are related to the conflict and to the intense militarization of the country as a whole. At the same time, violations such as torture and deaths in Police custody, 'social cleansing' through the assassination of known criminals and Police connivance with criminals are also common. Most complaints against the Police are not investigated and there have been no convictions under the Torture Act. The use of torture in state institutions was documented by both the U.N Committee against Torture in 2005 and by the Special Rapporteur on Torture, Manfred Novak after his visit to Sri Lanka in October 2007.
4. There is a high level of impunity, and delays in law enforcement and judicial processes result in lack of public confidence in these systems and institutions. This situation combines with extreme repression of dissent and silencing of voices of opposition to create an environment of fear and impunity in which no victims dare to come forward to seek justice.

5. As the conflict escalates, and security networks tighten, the spaces in which gay, lesbian and trans persons can be subject to harassment and intimidation expand. For example, 'cruising' for partners in public places is restricted because of the tight security; issues of identity become crucial for trans persons whose identity is challenged at checkpoints; socialising and travel become increasingly limited as well.

6. It is in the face of such a situation that the government consistently ignores and refutes calls by national human rights defenders, by the international community and by various human rights experts including the High Commissioner for Human Rights to allow for international monitoring of the human rights situation and for the establishment of an office of the OHCHR in Sri Lanka.

Legal framework

7. The Constitution of Sri Lanka has enshrined within it the principle of equality and non-discrimination, in fact there is a great deal of discrimination against persons of specific communities and categories in Sri Lanka. The Constitution includes a Fundamental Rights chapter that specifies the rights that all citizens can enjoy. It includes the right to equal protection under the law, the freedom of movement, the right to choose one's residence, freedom of expression and freedom from cruel and inhuman treatment. However it does not include the right to life or the right to privacy.

8. The government of Sri Lanka has ratified all key human rights treaties up to 2004. However, national legislation for implementing the substantive rights set out in international human rights law has been negligible, making it clear that under international pressure, the government of Sri Lanka has paid lip service to its obligations under international human rights law.

9. In 2006 the Supreme Court found that the ratification of the First Optional Protocol to the ICCPR by the President was unconstitutional, and called for a review of the process, saying that such a Bill impinged on the right of the government of Sri Lanka to make sovereign decisions and therefore could only come into force if approved by a majority in Parliament AND subject to a public Referendum. This decision called into question the totality of the commitments of the government of Sri Lanka to its obligations under international human rights law and rendered advocacy on the basis of all international human rights norms and standards questionable in the light of national law.

10. The National Human Rights Commission, which was established in 1996, has lost credibility since 2004 when the President made arbitrary appointments to the Commission, without the creation of the multipartisan Constitutional Council which is legally empowered to nominate representatives to all the independent Commissions. Although the present realities demand that the HRC of Sri Lanka exercises its mandate and responsibilities in full, it has instead become ineffective in responding to the victims of human rights abuse in this country at a moment of severe human rights crisis. In view of the situation, in 2007, the International Coordinating Committee to review the work of national human rights institutions decided to downgrade the NHRC of Sri Lanka, from a Grade A to a Grade B, citing violations of the Paris Principles with regard to the work of national human rights institutions.

International human rights obligations

11. Sri Lanka has ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child as well as the second Optional Protocol to ICCPR and CEDAW, allowing individual complaints procedures, and to the CRC.¹ As the Yogyakarta Principles observe, all persons, regardless of their sexual orientation or gender identity, are entitled to the full enjoyment of all human rights.² In spite of these obligations imposed on the Sri Lankan state by virtue of the ratification of these treaties, the government of Sri Lanka continues to deny legal recognition and protection in the arena of sexual and reproductive rights.

Laws pertaining to reproductive and sexual rights issues:

12. Sri Lanka is culturally and socially conservative when it comes to issues of reproductive and sexual rights, across all religious and ethnic communities. Women's capacities to make choices regarding their future, especially with regard to marriage and reproduction, are very restricted by cultural norms, and hetero-normative frameworks predominate in law and in social and cultural practice. Although traditionally there has been tolerance of persons of non-hetero-normative behaviour, this is only as long as it does not upset the social balance.

13. Abortion is a crime in Sri Lanka except in circumstances in which the mother's life is determined to be at major risk, by two specialist doctors. Those who procure abortions as well as those who commit the act of abortion are both penalised under the law. An amendment to the Penal Code to permit abortions for women and girls who are victims of rape and incest was presented to the Cabinet in 1995 and created such a furore that the Minister of Justice never even tabled the draft amendment in Parliament. In spite of abortion being a crime, many abortions take place every day in Sri Lanka; some are illegal and often carried out in insanitary conditions; others are termed as 'menstrual regulation' and are carried out in legal conditions. Some abortions lead to the death of the woman concerned; serious and long-term health risks are also a common consequence of illegal abortions. The UNFPA in a survey in 2002 assessed that over 1000 abortions take place a day in Sri Lanka.

14. Sex work is criminalized in Sri Lanka under the Vagrants' Ordinance, and both male and female sex workers are penalized under this Bill. Among the most serious issues faced by sex workers are the high level of intimidation, unlawful arrest and detention and sexual and physical violence and abuse.

¹OHCHR, *Status by Treaty*, available through the website:

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

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

15. Sri Lanka's Penal Code of 1883 No 2 (Cap. 19) criminalizes 'sex against the order of nature' and 'gross indecency'.

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

17. Article 365A: “Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of any act of gross indecency with another person, shall be guilty of an offence and shall be punished with imprisonment of either description for a term which may extend to two years or with a fine, or with both and where the offence is committed by a person over eighteen (18) years of age in respect of any person under sixteen (16) years of age shall be punished with rigorous imprisonment for a term not less than 10 years and not exceeding 20 years and with a fine and shall also be ordered to pay compensation of amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such a person.”³

18. Up to the time of the enactment of the Penal Code (Amendment) Act, No. 22 of 1995, Article 365A referred only to males. In the interests of gender equality, the term 'man' was transformed into 'person' thereby making women liable for prosecution under the law as well.

19. Marital rape is not defined as a crime in Sri Lanka. Therefore the concept of conjugal right of husband to have sexual intercourse with his wife continues, despite many cases of domestic violence, including against lesbians, in which forced sex is a key factor relating to the violence.

20. In addition, since the law defines rape as 'penetration by penis of vagina', the sexual assault of gay men cannot be legally defined as 'rape' although the act and the effect are similar.

21. There is no legal framework which protects the rights of people living with HIV/AIDS although there is a fairly widespread and institutional awareness of the problems faced by such persons. Issues of stigma and discrimination have been very widely discussed, including at meetings with the Ministry of Health, which has a special HIV/AIDS unit, UNAIDS and civil society groups working on the issue. In August 2007 Sri Lanka hosted the 8th International Conference on HIV/AIDS in the Asia-Pacific (ICAAP), at which there was broad discussion on the issue. However, issues of lack of access to testing, lapses in confidentiality and discrimination within the health service sector have all contributed to the denial of care to people living with HIV/AIDS. In addition, the media continues to demonize HIV/AIDS. A critical issue of discrimination is the fact that ART treatment for those living with HIV is available only in the capital, Colombo, and persons with HIV are compelled to make a long, arduous, often dangerous and expensive trip to the capital in order to avail the treatment which is free.

Freedom of Association and Expression:

22. There are three groups working directly on sexual minority issues in the country. While they are registered as organizations under various legal frameworks (social service organizations and as limited liability non-profit companies), they are under increasing scrutiny. As all forms of

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

extremisms grow and flourish, the number of threats, obscene telephone calls and other acts of intimidation is growing. The fact that there are only a handful of persons who are 'out' and are able to represent the views of the community in public arenas is also shaped by this high level of threat and intimidation.

23. There is a history of hate speech against lesbians, since June 2000, when the Press Council expressed its support for a letter published in the Island, a local daily, urging that convicted rapists should be unleashed at a proposed conference on lesbian issues.⁴ The decision stated that "...lesbianism itself is an act of sadism, and salacious publication of any opinion against such activities does not amount to a promotion of sadism or salacity, but any publication which supports such conduct is an obvious promotion of such violence, sadism and salacity".⁵ The man who had filed the complaint was fined.

24. At the National Consultation meeting on HIV/AIDS and Human Rights, held in Colombo, Sri Lanka in December 2004, Minister for Health Care and Nutrition, Nimal Siripala de Silva declared that same sex behaviour is 'unnatural' and said that Sri Lanka would never repeal its law on same sex sexual relations. The same Minister, speaking at ICAAP in August 2007, reiterated his position on this, saying "I don't want people to think I brought all of these people here (for the congress) to promote lesbianism and homosexuality."⁶

Impunity, stigma, discrimination and police harassment

25. Prejudice and social stigma that are a part of the daily experience of sex workers, lesbian, gay and transgender persons, people living with HIV/AIDS and even of single and unmarried women often compel them to suffer violence and violations in silence. This in turn strengthens the impunity which the Police and members of the community enjoy when it comes to sexuality baiting.

26. If a crime that is based on homophobia or prejudice is reported to the police, the victims often try to hide their identity due to fear of exposure, and further stigmatization and discrimination. When the identity is revealed inadvertently, their complaint is often ignored, laughed, trivialized.

27. Section 356 of the penal Code is used to persecute and intimidate gay men in particular, although no prosecution under this law is recorded in recent years. Members of the Police use the fact that sodomy, oral sex and other sexual acts could be defined as 'against the order of nature' in order to threaten gay men, extort money from them and subject them to forced sex. Although all the acts of violence and abuse against gay men could be prosecuted under different sections of the Penal Code, since almost all the gay men who are thus persecuted are terrified of being

⁴ P. Alles, "Lesbian Conference in Colombo?", *The Island*, August 20, 1999.

⁵ Sri Lanka Press Council, *Judgement to Complaint no S2/99/2096*, 2000.

⁶ Zofeen T Ebrahim, "Sri Lanka's Health Chief Puts a Downer on ICCAP," *TerraViva – The IPS Independent Online Newspaper 8th International Congress on AIDS in Asia and the Pacific, Colombo 19-23 August, 2007*, 23 August, 2007, available through the website, <http://www.ipsterraviva.net/tv/colombo2007/currentNew.aspx?new=962>, accessed 10 January 2008.

exposed, they never want to pursue the path of justice for the acts of abuse and exploitation that they face daily.

28. Lesbians are subject to harassment as well. In several cases over the last three years (2005/2006/2007), parents have complained to the Police that their daughters have been 'abducted' while in fact the daughters are adult women who have decided to leave home and start living with another woman. The charge of abduction is often suggested to the parents by the Police since it carries a heavy penalty and allows the Police to intervene. Despite the fact that both women are adults, the Police have been known to bring both women to the Police Station and 'hand over' the woman whose parents have made the complaint to her parents.

29. In 2006, EQUAL GROUND, an organization working for LGBTIQ rights in Sri Lanka reported that a 24 year old student from a university in Colombo was physically abused and left dead on the railway tracks because of his sexual orientation. According to them, the perpetrators were never brought to justice and the attack passed largely unnoticed due to the sexual orientation of the victim.

30. As all forms of extreme nationalism and fundamentalism have grown in all communities as a result of the identity-based conflict, there are also reports of harassment of sex workers and of lesbian, gay and trans persons on the basis that they 'offend' the culture. There have been some cases of killing of female sex workers in the north and east, and occasions on which a poster accusing the dead woman of committing sexual transgression has been left by the side of the body. In addition, accusing someone of being a 'homosexual' is seen as one way in which his or her assassination or disappearance can be justified in the name of the society and the community.

31. The imposition of dress codes for women – saree for University lecturers, saree for mothers visiting their child's school, hijab for Muslim women – is a manifestation of the various forms of extremism now being inflicted on the people of Sri Lanka. This restricts the mobility of women, and their freedom of expression.

32. Several gay men have fled Sri Lanka in recent years and are at present engaged in seeking asylum in different countries including the USA and the UK, on grounds that they face persecution if they return to the country. Among them are two gay Muslim men from the East of Sri Lanka who allege that they have been abducted, tortured, and have a Fatwa placed on their lives, due to their sexual orientation. EQUAL GROUND has also reported a similar case of a young Muslim man who fled his home in Beruwela in the south of Sri Lanka, after it was attacked due to his sexual orientation. The Women's Support Group, EQUAL GROUND and INFORM have all provided assistance to gay men seeking support in their asylum claims, including in a case determined in favour of the asylum-seeker – a gay man from the south of Sri Lanka – in the USA in 2007.

33. Many lesbian, gay and trans persons face tremendous psychological and emotional problems due to self-hate and self-pity, prejudice and marginalization from society and expulsion from their families and communities on being revealed to be of a different sexual orientation or gender identity than the 'norm'.

34. There have been several cases of suicide among these communities in the past ten years, and some groups that work in the area of psycho-social work have reported high numbers of persons from these groups seeking advise and counselling. The psychosocial problems that many lesbian, gay and trans persons face are rendered more complex by the fact that many in the medical profession also work with the perception that variations of sexual orientation and gender identity are mental disorders.
