

A RESOURCE FOR WOMEN'S RIGHTS ORGANIZATIONS IN SRI LANKA

**Engaging with Issues Faced
by Lesbian Women, Bisexual
Women and Transpersons,
in Cases of Domestic Violence,
Family Violence and Intimate
Partner Violence**

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Women and Media Collective
Established 1984



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A Resource for Women's Rights Organizations in Sri Lanka

Engaging with Issues Faced by Lesbian Women, Bisexual Women and Transpersons, in Cases of Domestic Violence, Family Violence and Intimate Partner Violence

**Women and Media Collective (WMC)
Outright International**

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01

Introduction

Introduction

This resource focuses on assisting women's rights organizations in Sri Lanka to engage with lesbian women, bisexual women, and transpersons—particularly those whose families, extended families and/or loved ones are being/have been violent to them or are being/have been discriminated against.

There is a perceived need for social justice activists, women's rights activists and movements, counselors, befrienders, social workers and psychologists in Sri Lanka to be able to work more effectively on issues of violence and discrimination with individuals who may not identify as heterosexual and whose gender identity may not correspond to the gender assigned at birth. In producing this resource, we are trying to attend to this need.

Whether or not women's organisations work directly on domestic and/or family violence, they often encounter women who are affected by these issues. While the nature of their activism brings them into contact with such issues, many community-based groups also tend to have the pulse of their communities. Some women's organizations in the country have been early responders in cases of domestic and family violence affecting lesbian women, bisexual women and transpersons, and are often seen by LBT persons as safe spaces.

In 2017, a team from the Women and Media Collective conducted some initial knowledge-building workshops on LBT rights and issues with Sri Lankan women's organizations. This exercise suggested that local women's movements required a deeper engagement with issues faced by LBT persons.

This is a systemic issue that cannot simply be solved by 'adding new skills' for working with LBT people to our existing repertoires. Women's groups do not need to develop special or additional skills to work with a special and 'different' sub-set of people. Rather, women's organizations and Sri Lankan women's movements in

general could approach the rights and issues of LBT persons as critical and core to any women's rights agenda and as a dimension which cuts across all their work.

LBT persons are sometimes perceived as if they are defined exclusively by gender and/or sexuality. Of course, there is a specificity to LBT people's experiences; for instance, in terms of violence, discrimination and exclusion that are shaped by the norms of heterosexuality, patriarchy and gender conformity. But that does not mean that those experiences are only defined by gender and sexuality. In other words, LBT people's experiences are not outside the bounds of intersectionality and should not be approached as such. Sexuality and gender should not be the standalone categories to consider when understanding the experiences of LBT persons. It is the intersectionality of sexual orientation, gender, religion, ethnicity, physical ability, age, class and so on, that make those categories as significant for LBT persons, as they are for other people.

Heterosexist, patriarchal and gender normative assumptions are so deeply ingrained in our societies that they do not need to call attention to themselves; they are now part of our discourse, our ideological orientation, our unconscious attitudes and our automatic responses.

To be constantly aware of these influences and to avoid subscribing to them are not straightforward matters for any of us, not even for those of us oriented with women's rights work. It is a gradual and difficult process of identifying and unlearning our own prejudices and biases, as well as having a willingness to take a deliberate and informed approach towards tackling intersectional issues.

What is imperative in addressing the needs of LBT persons in Sri Lanka is a dedicated effort to exploring the current gaps in our knowledge and discourses. We hope this resource will contribute towards that cause.

Note: *This gap was identified in a study titled 'Not Gonna Take It Lying Down': the Sri Lanka report of a five-country study on violence faced by LBT persons, published in 2014. This study was instrumental in the writing of this resource.*

The authors of this resource feel it is essential to make visible domestic violence, intimate partner violence and family violence as experienced uniquely by LBT persons, as they are often invisible, or at best neglected, in discourses and advocacy on both domestic violence and LGBT rights. Further, due to existing systemic patriarchal norms of gender-based violence, DV, FV and Intimate Partner Violence as faced by LBT persons deserve unique inspection.

02

UNDERSTANDING THE CONTEXT AND DEFINITIONS

2.1 The Law

Same-sex sexual behaviours are considered a punishable offence under the Sri Lankan law and are associated with a number of human rights violations for LBT persons due to interpretations made by law enforcement agencies. In Sri Lanka, Section 365A of the Penal Code (Amendment) Act No. 22 of 1995 can be read as criminalising consensual same-sex sexual relations between adults, including in private spaces.

Up until the 1995 amendment, this law applied only to men. Section 365A was made 'gender neutral' during the process of Penal Code reforms in 1995. The replacement of the word 'male' with 'person' effectively criminalised consensual sex between two adult women in private.

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 fine or with both and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term no less than ten years and not exceeding twenty years and with fine shall 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.

SECTION 365A,
PENAL CODE OF SRI LANKA, 1995

What is meant by the act of 'gross indecency' (first introduced by the British to the Penal Code of Sri Lanka in 1883) has not been clearly defined.

In 2016, in *Wimalasiri and Jeganathan Vs. State* the Supreme Court interpreted that "Section 365A was part of our criminal jurisprudence almost from the inception of the Penal Code in the 19th century. A minor amendment was affected in 1995; however, that did not change its character and the offence remains intact. This offence deals with the offences of sodomy and buggery which were a part of the law in England and is based on public morality."

In addition to the Penal Code, another piece of legislation introduced by the British in 1842, the Vagrants Ordinance, is used to penalise sex-workers, including mostly transgender sex-workers. It is also often used to harass and detain the homeless—some of who are mentally unwell—and others who may be seen to be 'loitering.'

These provisions from the Victorian era, translated into law in Sri Lanka since 1883 and 1842, have been in existence for more than a hundred and thirty years. The Sri Lankan state has been challenged on why it still insists on retaining these colonial era laws bestowed by England, when England has made the 'sodomy law' redundant and took steps to decriminalise same-sex sexual relations in the 1960s.

The stigma that accompanies the effective 'criminalisation' of LBT persons under Sections 365 and 365A of the Penal Code increases their vulnerability to emotional and mental trauma and to various types of violence, including sexual violence, blackmail and sexual bribery. As a result, many LBT persons are at a disadvantage when accessing services due to the risk of further repercussions and discrimination. In addition, the legal standard of "equality before the law," as guaranteed by the Constitution, privileges heterosexuality and forces the adoption of traditional gender roles amongst all persons, irrespective of their sexual orientation and gender identity, and so fails to respect, protect or fulfill the rights of LBT persons.

Further, an important issue for transpersons has been ensuring that identity documents, such as birth certificates and national identity cards, are altered to reflect their self-designated gender identity. Presenting identity documents is sometimes a necessity for everyday transactions. Under the circular No. 01 34/2016 issued by the Ministry of Health, changing one's sex and name on the birth certificate, based on gender recognition certificates, is now possible. Though this is not the end of the struggle for transpersons, it is a positive step towards enabling them to claim their right to receive protection from violence and discrimination.

Another piece of legislation pertinent to dealing with violence within the home and/or family is the Prevention of Domestic Violence Act of 2005. The Act was thought to be progressive at the time since it could be applied to a cohabiting partner of the aggrieved party. Technically, this legislation can be used to protect same-sex partners from violence, but the Penal Code provisions criminalising same-sex sexual relations may act as a deterrent for a lesbian woman, bisexual woman or trans woman who wants to file a complaint.

2.2 The Violence

Much of the discussion—cultural and legal—around Domestic Violence and Family Violence has, for several decades, been exclusively limited to understanding and remedying domestic violence in the case of 'heterosexual' relationships and families. Advocacy work tends to focus on gaining legal and other protections for survivors of violence in these circumstances. It is crucial to challenge narrow and exclusionary definitions of domestic violence, family violence and intimate partner violence in our discussions, and to actively include LBT persons in our understanding of all forms of violence in the home, family or within relationships.

Stigma around non-normative gender identities and sexualities, the aforementioned legal barriers, and overarching social concerns like systemic violence against women, serve to exacerbate any violence and discrimination directed at LBT persons by the family, the community and the state. These are the three 'perpetrators' of violence against women categorised by the United Nations Declaration on the Elimination of Violence Against Women.

'Violence against women shall be understood to encompass, but not be limited to, the following:

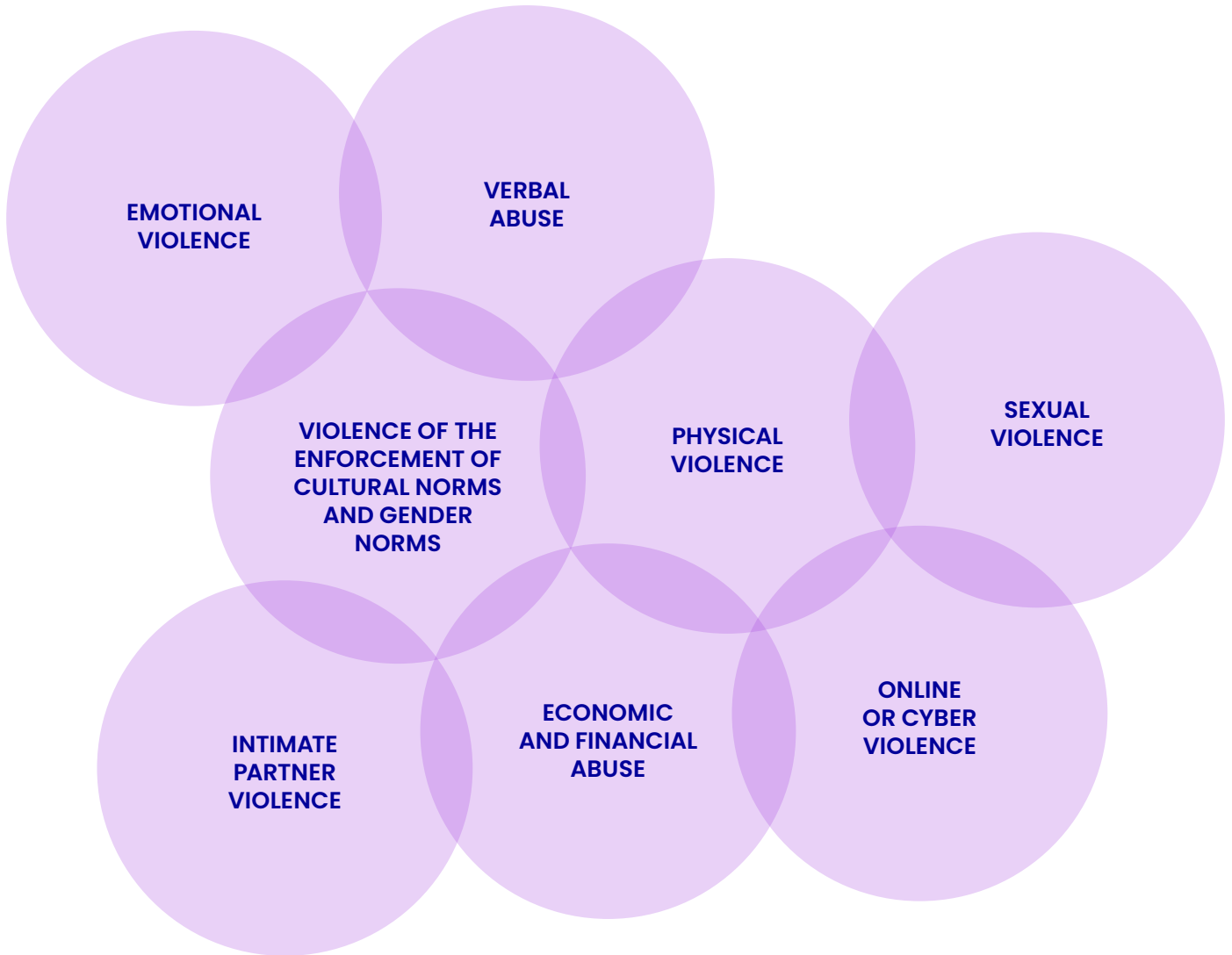
(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.'

When looking at violence against LBT persons specific to Sri Lanka, we can draw on the findings of a two-year study titled *'Not Gonna Take it Lying Down': Experiences of Violence as Told by LBT Persons Living in Sri Lanka*, published by the Women's Support Group (WSG) in

2014. The study gives insight into the types of violence perpetrated against LBT persons by non-state actors and private individuals (often members of the family and/or intimate partners), which are listed as follows:



Note: The 2014 study does not look at online/cyber violence, but the authors of resource felt it was imperative to include this as a category of violence in the present day. Some of these types of violence are described in the following table and further discussed in the sections that follow. Types of violent

behaviours are not mutually exclusive, as they often occur together or within the same relationship. This list is not comprehensive nor exhaustive, as the examples provided only highlight the most frequently or commonly experienced abusive behaviours.

SOME EXAMPLES OF TYPES OF VIOLENCE AND BEHAVIOURS	
PHYSICAL ABUSE	Punching, shoving, slapping, biting, kicking, using a weapon against LBT family member/partner, throwing items, breaking items, pulling hair, restraining LBT family member/partner
EMOTIONAL AND PSYCHOLOGICAL ABUSE	Putting LBT family member/partner down, calling names, criticising, playing mind games, humiliating LBT family member/partner, making LBT family member/partner feel guilty, reinforcing internalised homophobia, withholding love and affection
COERCION/ THREATS/ INTIMIDATION	Making LBT family member/partner afraid by looks or gestures, destroying property, hurting pets, displaying weapons, threatening to leave, taking children or attempting harmful behaviour (e.g. suicide), threatening to reveal sexual orientation and/or gender identity to community, employer, family or ex-spouse
MINIMIZING/ DENYING THE ABUSE	Making light of abuse, saying abuse did not happen, saying the abuse was mutual, blaming LBT family member/partner for the abuse
FINANCIAL DEPENDENCY	Preventing LBT family member/partner from getting a job, getting LBT family member/partner fired from job, making LBT family member/partner ask for money or taking partner's money, expecting partner to support them
SOCIAL ISOLATION	Controlling who the LBT family member/partner sees and talks to and where LBT family member/partner goes, limiting LBT family member/partner's involvement in the gay and lesbian community
SEXUAL ABUSE	Forcing LBT family member to have a sexual relationship with member of opposite sex to "cure" her, forcing partner to perform sexual acts that are uncomfortable to her, engaging in affairs as 'revenge,' telling partner he or she asked for the abuse, pressuring LBT family member/partner on how to dress, accusing partner of having affairs, criticizing sexual performance, withholding affection
INTIMATE PARTNER VIOLENCE AFTER THE END OF A RELATIONSHIP	Stalking, harassing in public places, threatening to hurt any new partner/s or anyone he/she suspects could be a new partner, threatening to 'out' the LBT person to their families/friends or in other public forums without their consent, threatening to report them to the police or in some way attempting to manipulate the person into restarting their relationship
ONLINE OR CYBER VIOLENCE	Limiting an LBT person's/partner's independence online, infringements of their privacy, using online communication to slander or 'out' them (revealing their sexual orientation and/or gender identity), stalking online and using personal information to threaten, frighten or intimidate the LBT person/partner, using photographs/video taken during an intimate relationship and posting them publicly on online platforms without consent

2.3 Some Definitions and Concepts

The following definitions look at how “family” and “home” can be defined in the Sri Lankan social and cultural contexts, and how we understand these terms and institutions in relation to LBT persons.

‘...family is defined broadly as the site of intimate personal relationships. A subjective definition, i.e. any unit where the individuals concerned feel they are a family, is more inclusive than an objective one and more relevant for the discussion of domestic violence. Rather than relying on the institutionalized definitions of family imputed by the State, notions of family should be reconceptualized around expressions of ideals of nurturance and care. There is a need to make room for “difference and plurality” within our understanding of what constitutes family.’

RADHIKA COOMARASWAMY, former special rapporteur for Violence Against Women to the United Nations

Globally, cultural norms which privilege heterosexuality and sanction patriarchy, shape our legal and judicial systems which primarily work to maintain the so-called sanctity of the heteronormative family. The main design of almost any family law is to keep the heteronormative family together. This characteristic of legal systems—enshrined in its very nature—could be seen as a serious disadvantage to people, particularly LBT persons, who experience family violence and who wish to seek legal redress and find justice.

‘According to the myth of the family as a sanctuary of tranquility and harmony, domestic violence is a veritable incongruity, a contradiction in terms. Violence shatters the peaceful image of the home, the safety that kinship provides. Nonetheless, the insidious nature of domestic violence has been documented across nations and cultures worldwide. It is a universal phenomenon.’

RADHIKA COOMARASWAMY, former special rapporteur for Violence Against Women to the United Nations

Domestic Violence

‘Violence that occurs within the private sphere, generally between individuals who are related through intimacy, blood or law... It is almost always gender-specific, in that women are often the victims and men often the perpetrators.’ ‘Domestic violence is often, albeit problematically, labelled “family violence,” so that the actual structure of the family, whether defined as nuclear, joint or singlesex, becomes an important subject of investigation. Discussions on family violence have failed to include the broad range of women’s experiences with violence perpetrated against them by their intimates when that violence falls outside the narrow confines of the traditional family.’

RADHIKA COOMARASWAMY, former special rapporteur for Violence Against Women to the United Nations

Intimate Partner Violence

“any behaviour within a relationship that causes physical, psychological or sexual harm to those in that relationship.”

WORLD HEALTH ORGANIZATION (WHO)

The World Health Organization (WHO) also asserts that the majority of reported cases of intimate partner violence involve men perpetrating violence against women; there are also incidents committed by women towards men and within same-sex relationships.

We should not take the lack of data on intimate partner violence in same-sex relationships as an indication that it does not happen, or that it happens with less frequency in comparison to within heterosexual relationships. Rather, it may mean that this violence is reported less when it occurs within same-sex relationships, which could be for a number of reasons.

Primarily, non-heterosexual persons may fear seeking legal remedies for any of their grievances because of the existence of discriminatory legislation such as Section 365 and 365A of the Sri Lankan Penal Code, which alienates

them from the justice system and limits their options. They might be wary of reporting intimate partner violence to the police for fear of how they may be treated or for fear that they might be arrested.

2.4 Language

The discourses we draw on in our interactions are dominated by assumptions that are heterosexist, patriarchal and gender normative. Therefore, it is generally important to be intentional in the use of language, and to be mindful that the choice of language is respectful and does not recirculate judgment and prejudice. For example:

"You are a woman so when you refer to a partner you must mean a man."

"As the woman you should try to keep your family together at all costs."

"You look like a 'man' so I shall call you 'he.'"

We should try to avoid repeating and reinforcing these biases. While there is no 'right' language to use, there are certain guidelines that you can follow.

- **'Consult first'** is an important guideline. The person you are counseling must guide your use of language at the very outset. For instance, employing pronouns unconsciously is habitual behaviour for most people. Only two pronouns are generally used to refer to an individual—either 'he' or 'she,' which is a 'binary view' of gender. These two pronouns are usually applied depending on how we interpret someone's physical appearance. While it may be common to use the "he," "she," "sir" or "miss" system of classification, be guided by how the person you are talking to self-identifies according to their own preference and experiences.

A good practice is to invite individuals to tell you how they prefer to be addressed. However, 'Consult First' does not mean that a commitment to listening is done after this stage, as a person's pronoun use can also vary over time and in different situations. As such, a continued commitment to listening mindfully for how someone talks about themselves is key.

- Therefore the **'Keep Listening'** guideline or principle then guides the rest of your analysis and behaviour towards the individual/s and/or the issue/s.

2.5 Categories of Sexuality and Gender

The 'Consult First' and 'Keep Listening' guidelines also apply when using terminology like lesbian, bisexual and transgender.

- You should not assume, for instance, that you can gauge the acceptability of using certain terms based on how you have heard a person's self-understanding of their gender and sexuality. Someone who is same-sex attracted may not necessarily use words like 'lesbian' or 'bisexual.' Someone who is gender non-conforming may not use words like "transgender," "transman" or "transwoman" to identify themselves. Refrain from introducing or imposing such terminology and listen out for how someone talks about themselves. You could ask them how they want to be identified and what words or phrases you can use that will help them feel comfortable and respected.
- We also need to be mindful of how the politics of language impacts the way we talk about sexuality and gender. For instance, be aware that some terminology is offensive or insulting. It is often considered useful for people who are new to the terminology and concepts of sexuality and gender, to read about the usage and definitions of terms like 'lesbian,' 'gay' and 'queer.' You may also come across a 'glossary of terms' that can be helpful. However, bear in mind that we should not use language in ways that objectify or pathologize people into 'types.'

As such, listening to how people talk about themselves is more important than just knowing terminology. Local research has indicated that, in daily Sinhala conversation for instance, people are less likely to use a formal language of identity and are more inclined to narratively explain what they mean.

- The 'Consult First' guideline does not mean that you should ask someone upfront how they identify and define their sexual orientation and gender identity, in the same way that you may ask them which pronoun they are comfortable using. Use your judgment about whether it is actually appropriate to ask them to divulge this information, as these questions may come across as intrusive and coercive. A person may not necessarily feel the need to self-identify in terms of their sexual orientation and gender identity or it may not be their practice. They also may not feel safe, at least not right away. Maybe they will feel more safe and comfortable with you after the first few conversations.
- The "Consult First" principle does not mean requiring everyone to identify. Identity is a common framework of understanding in LBT circles in Sri Lanka but it is not imperative for a person to divulge their sexual identity and gender identity when discussing LBT issues.
- You should also keep in mind that what you understand by the concept of sexual identity or gender identity may not be the same for the person approaching you for support. For instance, different people assign different meanings to terms like 'lesbian,' 'bisexual' and 'transgender,' so do not expect all LBT persons to have consistent and coherent definitions for these terms.
- Furthermore, the definitions of categories like 'lesbian,' 'bisexual' and 'transgender' are not static: they have been challenged, resignified and changed over time. Moreover, as English words, they may not always express the full spectrum of how someone feels and they may not have the same associations as, for instance, a sentence or phrase in a local language. Definitions always carry a degree of subjectivity and you should listen for how these words are subjectively meaningful to a person who uses them.

Words like 'lesbian,' 'bisexual' and 'transgender' have specific socio-cultural and political associations that are often not included in glossaries of key terms. It is likely that LBT persons will have some cultural knowledge of those meanings and will employ them in their language. They may be privy to discourses around what these terms mean, how they are used, what using or not using them means and so on.

A discourse is an assembling of ideas which enables us to make sense of a subject; it is grounded in and permeated by its institutional context. People speak discursively, not literally, when they use these terms. For instance, someone may embrace a term like 'lesbian' because of its discursive associations as a word used to vilify women. Glossaries of terms only get you so far because they can use universals in their definitions. It is important to learn from your clients about the specific discourses they employ concerning the language of sexuality and gender.

03

REFERRALS

Referrals

Below is a list of LBT-supportive individuals and organizations where LBT persons could seek mental health support, medical advice and/or legal advice. You/your organization could direct any LBT person/s to these groups or individuals, if you feel they would benefit from the support of a mental health professional and/or a medical professional, or benefit from more focused advice and support for the resolution of any issues they may be facing.

Equal Ground

LGBT rights organization which also provides counseling

General helpline: +94 115 679766

Family Planning Association of Sri Lanka

Counseling, medical advice

General helpline: +94 112 555455

Shanthi Maargam

Counseling

General helpline: +94 112 665126 / +94 717 639898

Women in Need

Counseling

General line: +94 112 671411

Nivendra Uduman

Counseling psychologist

(can be contacted at Shanthi Maargam)

Evan Ekanayake

Psychologist counselor

Psychosocial practitioner

Appointment by email: sophocles23@gmail.com

Text message only: +94 773 858868



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