



# Addressing **SOGIESC** Violations

## **MODULE 4**

*Addressing fundamental rights violations and crime against people with diverse SOGIESC*



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## Overview

This is the last of 4 modules that form this facilitator’s guide. This module focuses on redress mechanisms for violations of Fundamental Rights (FR) and obtaining redress when faced with criminal offences.

Under redress mechanisms for criminal offences, Sri Lanka’s court system, complaint procedure and mediation are discussed. Under redress mechanisms for violations of FR, obtaining relief from the Supreme Court, and applying to the HRCSL and Ombudsman are discussed. This module also discusses rights of a person under arrest or in detention.

This module uses lectures assisted by slides, discussions and role play as means of delivering the content.

This module consists of 5 sessions to be rolled out in 6 hours.





## Online Reference

To access the Online Version of the Module 04 and the Presentation,  
SCAN THE QR CODE BELOW:



Or simply type the below URL on your web browser:

**[www.shorturl.at/rK389](http://www.shorturl.at/rK389)**



## Session Plan

Time: 09:00 AM- 05:00 PM (6 hours)

START TIME	TIME ALLOCATION	SESSION
09:00 AM	15 minutes	Recap of day 3
09:15AM	1 hour	Session 01: Difference between common crime and human rights violations <i>Activity &amp; discussion</i>
10.15 AM	1 hour	Session 02: Redress for criminal offences <i>Lecture assisted by slides</i>
11:15 AM	15 minutes	Break
11:30 AM	1 hour	Session 03: Redress for a Fundamental Rights violation <i>Lecture assisted by slides</i>
12:30 PM	1 hour	Mid-day break
01:30 PM	45 minutes	Session 04: Rights in case of arrest and detention <i>Discussion</i>
02.15 PM	1 hour 30 minutes	Session 05: Redress for a criminal offence or a FR violation in practice <i>Role play</i>
03:45 PM	15 minutes	Break
04.00 PM	30 minutes	<i>Session 05 continued</i>
04.30 PM	15 minutes	Post-test
04:45 PM	15 minutes	Closing and final thoughts

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# Session 01: Difference between Common Crime and a Human-Rights Violation

*An activity followed by a discussion*

## Time

1 hour

## Target group

All groups

Approximately 30 participants in a group

## Objectives

At the end of this session, the participants will be able to:

- Distinguish between common crime and a human rights violation

## Tools needed

- Print out of the Annex at the end of this session plan

## Preparation

- Slides

## Steps:

- Explain that in this session, the participants will learn the difference between crime and a human rights violation.
- Divide the participants into 5 groups.
- Distribute the printouts of scenarios among the groups (found in the annex preceding the session plan), giving 1 scenario per each group.
- Give the groups 20 minutes to discuss whether the given scenario is a common crime or a human rights violation. At the end of the 20 minutes, invite each group to explain the scenario and why they concluded that the scenario is either a common crime or a human rights violation.
- Attend to each group at least once and support them to identify key elements of the scenarios.
- After each group presents, summarize the key features of the scenario that makes it a common crime or a human rights violation.
- Proceed to the presentation assisted by the slides. The notes for the presentation are found in the 'Notes' section below.

## Notes:



## Difference between Common Crime and Human Rights

### Common Crime

The criminal justice system is an instrument at the state's disposal to address instances of common crime. Central function of the state is to provide security to its citizens and the criminal justice system facilitates this.

Criminal acts are set out in the:

- Penal Code (sets out the crimes and offenses and their punishment)
- Code of Criminal Procedure (sets out the procedure for administration of substantive criminal law set out in the Penal Code)

Criminal law generally defines the rights and obligations of individuals in society, elements of specific crimes and the elements of various criminal defenses. Criminal procedure generally is the enforcement of individuals' rights during the criminal process, for example, during law enforcement investigation, arrest, filing of charges, trial, and appeal, etc.

If you are subjected to a criminal offence, the first step is to make a complaint to the Police. All criminal cases are prosecuted by the State- that means you do not need to find a lawyer and pay legal fees if a crime against you has taken place; It is the duty of the State. Police together with the Attorney General's Department will prosecute the criminal case.

### Human Rights

Human Rights, in contrast do not depend on the state, but accrue to all individuals irrespective of any other factor. They are inalienable rights to which a person is inherently entitled, simply because he or she is a human being. The purpose of Human Rights is to protect the individual against the power of the State. This protection has become legally more effective by the adoption of International Human Rights Treaties.

In Sri Lanka, Human Rights are protected through development of national constitutional law. i.e., the Fundamental Rights provided in our Constitution and recourse for violation of fundamental rights can be obtained through petitioning the Supreme Court or via the complaint mechanism to the Human Rights Commission of Sri Lanka.

## International Human Rights Conventions

The Universal Declaration of Human Rights (UDHR) is the first legal document to set out the basic human rights to be universally protected. Rights set out in the UDHR include:

- Article 3 – Right to Life
- Everyone has the right to life, liberty and security of person.
- Article 7 – Right to Equality  
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
- Article 9 – Right to Freedom from Arbitrary Arrest  
No one shall be subjected to arbitrary arrest, detention or exile.
- Article 12 – Right to Privacy and Family Life  
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

The rights mentioned in the UDHR are further elaborated by the International Bill of Rights comprising the following two Covenants:

- The ICCPR – the International Covenant on Civil and Political Rights
- The ICESCR – the International Covenant for Economic, Social and Cultural Rights

If your fundamental rights are violated, you can, by yourself or through a lawyer, petition to the Supreme Court seeking a remedy. You can also seek support from the Human Rights Commission of Sri Lanka (HRCSL). Seeking a remedy for violation of human rights will be discussed in detail in the following sessions.

### Summaries:

In conclusion, human rights are defined in international law. Fundamental Rights are certain civil and political rights guaranteed in Chapter III of the Constitution of Sri Lanka. Economic, Social and Cultural Rights can be found in the 'Directive Principles of State Policy and Fundamental Duties' in Article 27 of the Sri Lankan Constitution. They are not enforceable under the Constitution and merely reflect the intent to include those principles in law making and practice.

Human Rights are important because they offer protection for us all, especially those who may face abuse, neglect and isolation. These rights give us power and enable us to speak up and to challenge poor treatment from a public authority.

## Annex

1. Mervin is a transgender activist. He is living together with his girlfriend Roshni in Piliyandala. For International Day Against Homophobia, Transphobia and Biphobia Mervin speaks at a press conference and criticizes an emerging youth political group "One Country Movement" whose messaging is extremely transphobic. The leader of "One Country Movement" Malan used to be a classmate of Mervin at the University and has come to Mervin's house for drinks. So, Malan knows where Mervin lives. Angered by Mervin's press conference Malan send a group of thugs to Mervin's house the following night. Thugs beat Mervin and sexually assault Roshni. They also force Mervin to give his computer password and take his computer.
2. Sarath who is gay is living alone. He is 70 years old. One day two young men, Amal & Kamal, break into his house and steal a valuable watch. Sarath makes a complaint at the Police station. The Police calls the two men who broke into his house and Sarath to the Police station the following day. Kamal's older brother is a close friend of the OIC of the Police Station. Kamal's brother calls the OIC and says that Kamal has got into a small trouble and asks to sort it out. When Amal and Kamal come to the Police station, they say that Sarath invited them into the house and made sexual advances. Amal and Kamal refused and left but didn't take anything at all. The Police tells Sarath that this seems to be the truth. When Sarath asks the Police to write down the complaint, they refuse.
3. Savani is working at the Department of Education in Colombo. She is gay. She is 40 years old and is living with her parents. Despite all her hard-work she has never been promoted. She knows she is next in line for a promotion. However, she finds out that she will be not considered for the promotion. She approaches her Supervisor Malani and asks why she is not considered for the promotion. Malani explains that because Savani is gay, a promotion will make it look like Malani is promoting a new culture and it will not be good for the Department.
4. Sean is a 14-year-old student in one of the government schools in Sri Lanka. He has a crush on Ramon, a classmate. One day Sean writes a love letter to Ramon and it is found by the school teacher. The teacher gives it to the Principal. The Principal calls Sean's parents to the school and ask them to remove him from the school. Sean's mother is a lawyer and she is not willing to take Sean out of the school. In fact, she thinks this is a FR violation and is going to take action.
5. Jenelle is a young transwoman. One day, while she is driving to work, the Police stop her vehicle at a routine check point. When they see that her driver's licence shows her name is Jason and sex as male, they arrest her for 'cheating by impersonation'. Once she is taken to the Police, 2 officers scold her saying that she is a threat to the society. One officer squeezes her breast 'to see if they are real'.

## Session 02: Redress for criminal offences

*Lecture assisted by slides*

### Time

1 hour

### Target group

All groups

Approximately 30 participants in a group

### Objectives

At the end of this session, the participants will be able to:

- Briefly describe the process to be followed if they face a criminal offence
- Know the basics about the court system of Sri Lanka
- Recall the basics about mediation

### Tools needed

- Projector & screen

### Preparation

- Slides

### Steps

- Explain that in this session, the participants will learn two main methods in which a remedy can be obtained with regard to a criminal offence: 1) Accessing a judicial remedy, and 2) Mediation.
- Proceed to conduct the lecture assisted by slides.
- During the presentation, give participants time to ask questions.
- Use questions to engage the participants; for example, you may ask, 'What do you think you need to take with you when you go to the Police Station to make a complaint?', 'Do you think there are any cases which should not be referred to mediation?', 'How do you think the state should protect victims of crime and witnesses?' etc.
- Notes for the presentation can be found in the 'Notes' section below.

## Notes

### Redress for crime: Accessing a judicial remedy

In Sri Lanka, if you are subjected to a criminal offense, you can seek a remedy through the court system.

### Sri Lanka's Court System

The hierarchy of the Sri Lankan court system is set out in Section 2 of the Judicature Act No. 2 1978. This legally enshrined hierarchy sets out that primary courts, magistrate's courts, district courts and high courts are courts of first instance, while high courts exercise appellate and review jurisdiction for limited and specific cases. Court of Appeal and Supreme Court are the Appellate Courts.

In cases involving criminal law, a Magistrate's Court or a High Court is the only court with primary jurisdiction; the respective legal domains of each are provided in the Code of Criminal Procedure.

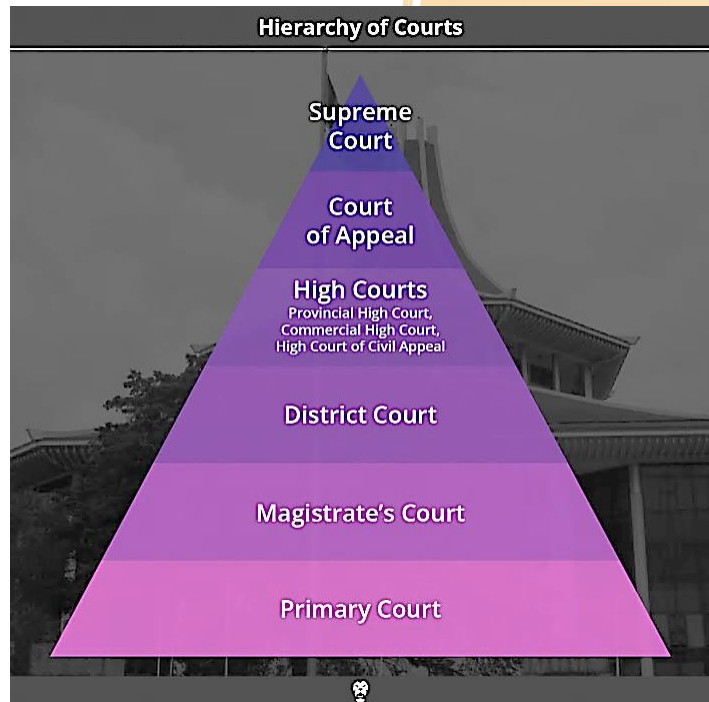
Most criminal law cases are initiated at a Magistrate's Court. These cases may be initiated by any police officer, or public servant, with a written or oral complaint to the magistrate. Murder trials and various offenses against the State originate in a High Court.

Original jurisdiction over most civil matters lies with the relevant District Court.

The Court of Appeal is the first appellate court for correction of all errors in fact or in law in respect of decisions of all original courts. In exercise of its jurisdiction to affirm, reverse, correct, or modify any order, judgment, decree or sentence, the Court of Appeal may give directions to a court of first instance, tribunal, or other institution, or order a new trial or additional hearings as the Court of Appeal deems appropriate.

The Supreme Court is the highest and final court of record, and exercises final civil and criminal appellate jurisdiction and also exercises jurisdiction in respect of reviewing the executive and legislative actions against the Constitution and fundamental rights.

Read more: <https://roar.media/english/life/reports/cogs-of-democracy-sri-lankas-court-system>



## Complaining to the Police about a criminal offence

In Sri Lanka, if you are subjected to a criminal offence including a crime based on SOGIESC, such as hate crime, the first step is to make a complaint with the Police. The Police Station is open 24 hours of the day, every day.

All persons are allowed the right to make a complaint at the Sri Lanka Police regardless of SOGIESC.

Usually, the complaint must be made to the Police Station which has jurisdiction in the area where the crime was committed (i.e. your complaint must be made to the nearest police station in the area where the crime/violation occurred).

Upon arriving at the police station, speak with reception and explain the nature of your complaint. The OIC should direct you to the necessary Subject Division which is dedicated to taking your particular type of complaint (E.g. if it is a complaint of Robbery, then you will be directed to the Criminal Investigations Department etc.)

**When making the complaint, one must be able to provide the following;**

- Identify yourself (Full Name, NIC Number, Age, Occupation, Residence, Contact details)
- Time, Date, Place of incident
- Describe the Accused (As much detail as available, preferably Name, Gender, Age, Occupation/Designation)
- Describe the Accusation (E.g. Sexual harassment, what is the kind of harassment, what did they do for you to perceive it as such)
- What is the recourse you seek (Wish to go to court, settle, compensation, etc.)?

Upon making a complaint, you must receive instructions for follow up from the Officer who takes down your complaint and make note of their instructions. You are entitled to a copy of the complaint (E.g.: Reporting for missing NIC, license, etc.).

- The OIC of station is duty bound to issue accident report without any undue delay
- Otherwise, you will not be given a copy as it could induce falsified evidence upon later trial date (criminal procedure code section 444)
- The accused is entitled to a copy of the complaint

Sri Lanka Police cannot deny citizens' complaints. In case of such denial you are advised to request a meeting with the Assistant Superintendent of Police (ASP).

**In case of police misdoings, if you wish to make a complaint about the actions of Sri Lanka Police;**

- Any person who is aggrieved by an act of a Police Officer or Police Service may lodge a complaint with the Public Complaints Investigation Division (PCID) or any of the Provincial Offices of the National Police Commission.
- There shall be a Provincial Director appointed for each Province who shall be in charge of the investigations into the public complaints received by the Provincial Office. He shall report direct to the Director, PCID at the Commission.
- Any public complaint received against a Police Officer or the Police Service shall be acknowledged by an authorized officer within one week.

When going to the police station to place a complaint, it is advisable to take legal counsel with you.

### **Complaining of sexual violence**

If you are making a complaint of sexual violence including rape it is advisable to go to the police station as soon as possible. Do not brush your teeth, bath or change your clothes in order to protect DNA and other physical evidence of the crime that may be on you. If there are any injuries, the Police will take you to the hospital.

The Police division has to collect evidence in order to take action on the victim's case. Evidence collection includes medical tests, fingerprints, DNA tests, etc

Read more: <https://gic.gov.lk/gic/index.php/en/component/info/?id=479&catid=31&task=info>

### **Obtaining Legal Aid**

Legal assistance to the vulnerable groups of a country constitutes an important segment of the administration of justice.

Legal Aid Commission of Sri Lanka (LAC) is the foremost amongst the various other institutions and organizations that cater to this important requirement, mainly due to its sustainability and stability. Legal Aid Commission was established by the Act No 27 of 1978 and at present it has 84 Centres Island wide inclusive of the Colombo Centre located directly under the Head Office.

The Legal Aid Act No.27 of 1978 states that the commission is to provide Legal Aid to all the "Deserving Persons" in the Country. The LAC with over 120 permanent Legal Officers and over 1000 panel lawyers from the regional Bar Associations is the main institution dealing with access to equitable Justice in Sri Lanka.

Legal Aid Commission provides free legal advice to any person in the country free of charge irrespective of their income level. Any person can come to the LAC head office or centres asking for free legal advice from 8.30 a.m. to 4.15 p.m. on weekdays.

However, the main focus of the centres of the Legal Aid Commission is litigation. Legal aid is given to deserving persons: The term 'deserving person' has not been defined in the law and has been given an interpretation by the LAC using the internationally recognized tests –

**Means Test:** Deserving persons under the 'means test' are those individuals receiving a monthly income of Rs. 25,000.00 or less. The income level has to be verified by the Grama Niladhari of the area. In appropriate cases, the Director or Legal officer of a relevant centre is authorized and has the discretion to be flexible in providing legal aid to destitute persons whose income level may exceed Rs. 25,000/= per month.

In this context if a father of a family has an income of Rs. 25,000.00 or more per month, the wife, son, daughter or any other member of the family could seek legal aid irrespective of the fact that the father has an income of Rs.25000.00 or more per month. It is the income of the individual that is considered in granting legal aid.

**Justice Test:** The justice test would be used in providing legal aid when the ambit of the litigation transcends adjudication of personal disputes to affect a group or a wider class of persons.  
**Special Status for Woman in Maintenance Cases:** Legal aid is available to all women seeking maintenance for themselves and for their children irrespective of their income/financial status.

**The process:** If you are a 'deserving person' then upon informing the regional legal aid office of your grievance a case worker, often a lawyer will be appointed to your matter. Even if the case goes in to litigation, all court expense will be incurred by the legal aid office and they will represent your matter in court on your behalf.



## The Protection of Victims of Crimes and Witnesses

The Assistance to and Protection of Victims of Crime and Witnesses Act, No.04 of 2015 provides for the establishment of National Authority for the Protection of Victims of Crime and Witnesses in order to protect the victims of crime and witnesses. The Authority is located at No.428/11A, Denzil Kobbekaduwa Mawatha, Battaramulla<sup>1</sup>.

The Act provides for the establishment and maintenance of “The Victims of Crime and Witnesses Assistance and Protection Division”. Section 19(2) of the Act provides for the Senior Superintendent of Police, who will be placed in charge of the Division.

It needs to be stressed that this is an important service as the proper functioning of a state’s justice system depends on the willingness of victims to come forward and report crimes committed against them and the availability of witnesses to provide information and testify as to what they saw in a full and impartial manner. Thus, where victims and witnesses feel threatened, undermining their willingness and ability to come forward, society as a whole is denied justice.

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<sup>1</sup> <https://napvcw.gov.lk/about-us>  
[https://www.moj.gov.lk/index.php?option=com\\_content&view=article&id=65&Itemid=218&lang=en#](https://www.moj.gov.lk/index.php?option=com_content&view=article&id=65&Itemid=218&lang=en#)

### **Duties and functions of the authority;**

Duties and functions of the Authority established under Section 11 of the Act:

- Enforcement functions: To identify, promote, protect and make aware of the rights and entitlements of the victims of crime and witnesses;
- Quasi-judicial functions: To investigate and monitor the infringement of rights and entitlements of the victims of crime and witnesses and make recommendations to state institutions, public officers and courts of law;
- Operational functions: To guarantee protection of the victims of crime and witnesses;
- Regulatory functions: To issue guidelines and to supervise.

Sri Lanka still does not have a mechanism to provide new identities to witnesses who may have threats from drug lords or other serious criminals.

If a witness decides to take a step back from attending an identification parade citing fears to their own safety, provisions are available to accommodate the witness at a separate location to identify the accused, without coming into the view of many outsiders.

### **Redress for crime: Mediation**

Alternative Dispute Resolution (ADR) is a procedure for settling disputes without litigation, such as arbitration, mediation, or negotiation. They are more 'settlement' oriented. ADR procedures are usually less costly and more expeditious.

One of the primary reasons parties may prefer ADR proceedings is that, unlike adversarial litigation, ADR procedures are often collaborative and allow the parties to understand each other's positions. ADR also allows the parties to come up with more creative solutions that a court may not be legally allowed to impose.

### **Mediation**

Mediation is a form of Alternative Dispute Resolution used in Sri Lanka.

Mediation Boards Act, No 72 of 1988 which established Mediation Boards, also sets out how mediation is to be carried out in Sri Lanka. The Act provides for the legal framework necessary for institutionalizing Mediation Boards, which are empowered to resolve, by the process of mediation, all disputes referred to it by disputing parties as well as in certain instances, by Courts.

The establishment of Mediation Boards has offered a unique opportunity for speedy settlement of minor disputes in which it operates as a strong mechanism for the settlement of disputes as an alternative mean to litigation. At present, there are 329 Mediation Boards throughout the island and approximately 8,266 mediators are assisting people on voluntary basis enabling them to reach an amicable settlement to their dispute some of which have dragged on for years.

The Mediation Boards Commission comprises of 05 (five) members. Three of them are statutorily required to be retired judges of the Superior Courts. All these members are appointed by the President. The administration activities of the Mediation Panel Boards viz. appointment, transfers, dismissal and disciplinary control are charged by the Mediation Boards Commission.

Mediators act as a third party in settlement of disputes among the parties. Efficiency of the Mediation Panel Boards may be evaluated on the basis of the number of disputes which such Boards receive per annum.

Under Sri Lanka's law, it is mandatory that certain offences- such as property or debt claims of less than 500,000 rupees and **minor criminal offences such as hurt, intimidation, trespass, and misappropriation, are referred to mediation before they can be taken up in court.** If a settlement is not reached, a non-settlement certificate issued by the Board must be produced in order to have the cases heard before a court.

### Disputes Which Can be referred to Mediation

The Act seeks to distinguish between disputes which must mandatorily be referred for Mediation (prior to the filing of any action in respect of such dispute, in Court) and other disputes which may voluntarily be referred for Mediation by the choice of the parties. There is also provision for disputes to be referred for mediation by Court.

Mediation has the potential not only to resolve disputes but also to avoid them. Mediation offers to the maintenance of a stable society and a sound economic environment. Resolution of community, commercial and employment disputes through Mediation enables disputing parties not only to find their own solutions to the problems but also to continue relationships

that would have otherwise been scarred and ruined through an adversarial approach.

Resorting to Mediation does not have any adverse effects in terms of losing the right to pursue other processes because, if Mediation does fail, parties would still have the right to pursue other processes. The relevant laws recognize that the prescriptive period does not run while parties are engaged in Mediation.

Accessibility to Mediation services is assured and the process is easily initiated. Mediation is inexpensive. The process enables parties to address and deal with issues that they themselves have identified as important.

### Note to Facilitator

- Ask the participants if there are any cases that they think should not be referred to mediation.
- Discuss the practical challenges with regard to mediation in sexual offenses- such as intimidation of survivor, victim blaming etc. Note that mediation is not meant to be used in serious criminal offences such as rape.

- Discuss the practice of reconciling in cases of intimate partner violence. Sometimes cases of IPV are referred to Mediation Boards. Explain that not taking IPV against women seriously constitutes a violation of the survivors' FR.

### What disputes are to go to mediation?

- Subject to exceptions matters can be referred to mediation voluntarily. Voluntary referral is not allowed if one party is the state, if the dispute relates to recovery of property, money or other dues on behalf of the state or if the Attorney General has instituted proceedings for any offence.
- Also, there is mandatory referral of both criminal matters and civil matters.
- Criminal matters that can be resolved through mediation are specifically mentioned in the Act as property offences, assault, trespass and defamation, but not more serious crimes such as rape or murder.
- Civil matters are subject to the qualification of the dispute being related to property, debt, damage or demand not exceeding rupees 500,000. Further it is subject to number of exceptions such as fundamental rights and matrimonial disputes.
- Next is the Court referral under which any Court may refer disputes for mediation with the consent of the parties. However, in this process parties are not allowed to let their legal representatives take part in the mediation process.

### Application for mediation

An application for Mediation can be initiated by any one party to the dispute or by all the disputing parties. If there is no agreement between the parties that Mediation be resorted to, the Mediation centre will talk to the reluctant party with a view to obtaining consent to pursue Mediation.

Where all the parties agree to pursue Mediation, an Agreement to Mediate is entered into, by which the parties agree to abide by the Rules of the Centre and such other mutually agreed upon ruled by them in the conduct of the Mediation.

As for the process itself, there are rules followed such as confidentiality with regard to what goes on in the Mediation sessions, and Parties are required to attend the sessions in person and no legal representation is permitted. The sessions are private.

### Mediation Proceedings

Upon an application being made to a Panel of Mediators to settle a dispute arising within its area, the dispute is referred to a Board, which consists of three members of the Panel constituted according to the preferences of the disputants. The Board may either be a pre-constituted one selected by the disputants or its members may be individually selected according to the choice of the parties from amongst Panel members. Upon the reference of a dispute to a Board, the Board is required.

Read more: <http://mediation.gov.lk/static/docs/en/justalternative.pdf>

## Summaries

Any person has the right to obtain a remedy if a crime has been perpetrated against them, regardless of their sexual orientation, gender identity & expression, and sex characteristics. The Police plays a critical role in preventing and prosecuting crime. If you are subjected to a criminal offence, you can go to the nearest police station. Prosecuting a criminal case is the responsibility of the state- therefore, you do not need to pay for a lawyer. However, if you fear that you may be discriminated against at the Police station due to your SOGIESC, it is best to be accompanied by a lawyer.

## Session 03: Redress for a Fundamental Rights violation

*An activity followed by a discussion.*

### Time

1 hour

### Target group

All groups

Approximately 30 participants in a group

### Objectives

At the end of this session, the participants will be able to:

- Recall three ways in which a remedy for FR violations can be sought, i.e., through Supreme Court, through HRCSL, and complaining to the Ombudsman.
- Know how to make a complaint with the HRCSL and the Supreme Court

### Tools needed

- Projector & screen

### Preparation

- Slides

### Steps

- Explain that in this session, the participants will learn three main avenues through which a remedy can be obtained about a violation of fundamental rights: 1) through the Supreme Court, 2) through HRCSL, and 3) through Ombudsman.
- Proceed to conduct the lecture assisted by slides.
- During the presentation, give participants time to ask questions.
- Use questions to engage the participants.
- Notes for the presentation can be found in the 'Notes' section below.

### Notes

## Redress for FR Violation: Supreme Court

By virtue of Article 126 of the Constitution, the Supreme Court has the jurisdiction to hear cases of FR violations and give a just remedy.

Article 126. (1) The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the **infringement or imminent infringement** by **executive or administrative action** of any fundamental right or language right declared and recognized by Chapter III or Chapter IV.

(2) Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may **himself or by an attorney-at-law on his behalf**, within one month thereof, in accordance with such rules of court as may be in force, apply to the Supreme Court by way of petition in writing addressed to such Court praying for relief or redress in respect of such infringement. Such application may be proceeded with only with leave to proceed first had and obtained from the Supreme Court, which leave may be granted or refused, as the case may be, by not less than two Judges.

(3) Where in the course of hearing in the Court of Appeal into an application for orders in the nature of a writ of habeas corpus, certiorari, prohibition, procedendo, mandamus or quo warranto, it appears to such Court that there is prima-facie evidence of an infringement or imminent infringement of the provisions of Chapter III or Chapter IV by a party to such application, such Court shall forthwith refer such matter for determination by the Supreme Court.

(4) The Supreme Court shall have power to grant such relief or make such directions as it may deem just and equitable in the circumstance in respect of any petition or reference referred to in paragraphs (2) and (3) of this Article or refer the matter back to the Court of Appeal if in its opinion there is no infringement of a fundamental right or language right.

(5) The Supreme Court shall hear and finally dispose of any petition or reference under this Article within two months of the filing of such petition or the making of such reference.

### **What is an imminent infringement?**

This means that it is not necessary to have FR already violated to access a remedy through the Supreme Court. If you have reasonable cause to believe that your rights are about to be violated, you can petition to the Supreme Court.

### What is an executive or administrative action?

This means that you can only seek a remedy from the Supreme Court for an FR violation by a government agency or authority exercising executive or administrative functions. However, one cannot petition to the supreme court for a violation of fundamental rights, if it is due to a judicial action.

#### ***Dayananda vs. Weerasinghe* [1983] 2 SLR 84**

- The Supreme court held that the wrongful exercise of judicial discretion cannot be questioned in a fundamental rights application.

#### ***Satyapala vs. Attorney-General/SC Application No. 40/84, SCM 11.05.84.***

- An act by the president cannot be challenged under Article 126.
- Nineteenth Amendment to the Sri Lankan Constitution enabled people to seek a remedy in terms of Article 126 by petitioning to the Supreme Court if Fundamental Rights were violated by an act of the President acting in his/her official capacity. However, this was reversed by 20<sup>th</sup> Amendment to the Constitution.

#### ***Bandara vs. Wikremasinghe* [1995] 2 SLR 167**

- A student was beaten by the deputy principal, vice principal, and a teacher of a school
- The court held that the respondents were liable for an infringement of fundamental rights by executive or administrative action.

### What is the rule on standing?

This means that a third party cannot petition to the Supreme Court. The person whose rights are violated or about to be violated, themselves (or through a lawyer) must petition to the Supreme Court.

#### ***Sriyani Silva vs. Iddamalgoda, OIC Police Station Paiyagala* [2003] 3 SLR 63**

- An army deserter died due to injuries sustained during torture by the Police
- Court held that the wife of the deceased had the right to make the petition on behalf of the deceased husband

#### ***Bulankulama vs. Secretary, Ministry of Industrial Development* [2000] 3 SLR 243**

- Petitioners said that a proposed agreement for mining phosphate violated the residents' right to equality, freedom of engaging in a lawful occupation and freedom of choosing a residence in Sri Lanka. The case was filed collectively as a public interest litigation.
- Court stated that just because this case was one of public interest litigation, petitioners are not disqualified, and that they individually had standing.



### What does one-month rule mean?

This means that the petition to the Supreme Court must be made within 1 month of the violation of FR.

#### ***Saman vs. Leeladasa* [1989] 1 SLR 1**

- Petitioner was beaten while in remand custody on 1<sup>st</sup> December. He was hospitalized from 2<sup>nd</sup> to 11<sup>th</sup> December when he received bail. He filed a fundamental rights application on 7<sup>th</sup> January.
- Court held that the one month began to run only when he was discharged from the hospital.

### Redress for FR Violation: HRCSL

#### **The Human Rights Commission of Sri Lanka (HRCSL)**

The Human Rights Commission of Sri Lanka (HRCSL) is an independent Commission established under the enactment of the Human Rights Commission Act No. 21 of 1996.

The HRCSL is referred to in the Constitution of Sri Lanka, but it is not formally established by the Constitution.

The Head Office of the Human Rights Commission is in Colombo. In addition, there are 10 regional offices around the island.

#### **The functions of the Commission**

- To promote and monitor protection of fundamental rights guaranteed by the Constitution
- To ensure compliance by the Sri Lankan State of international human rights standards
- Investigate into any complaints of fundamental rights violations or imminent fundamental rights violations
- Grant suitable redress, including compensation, and of unfettered access to inspect and monitor any place where a person is deprived of liberty (freedom of movement and freedom from arbitrary detention by others)
- The Commission uses international human rights standards to interpret constitutionally guaranteed rights

#### **The Commission's powers**

- Power to intervene in a matter pertaining to fundamental rights before any court
- Authority to scrutinise national laws, administrative directives and practices to ensure they are in accordance with international human rights norms – done through the release of recommendations to government

## How to make a complaint with HRCSL

A victim or a group of victims of fundamental rights violation (or imminent violation), or person or a group representing the victim(s) of rights violation can make a complaint to the HRCSL. The Commission can also investigate and inquire into fundamental rights violations on its own motion.

A complaint can be made in Sinhala, Tamil or English. Complaint forms can be obtained free of charge from the HRCSL (head office or regional offices), or from the HRCSL website here <https://www.hrsl.lk/make-a-complaint/>. Complaint can be lodged by in person, sent by post, by email, by fax or by giving information through the HRCSL hotline (by dialing 1996).

If the complaint does not fall within the Commission's mandate it will not be accepted. However, if it falls within mandate of another body the HRCSL will direct the complainant to that body or forward the complaint to that institution (ex: administrative injustices can be referred to the Ombudsman's Office).

## Making a complaint at the Human Rights Commission of Sri Lanka

If a Human Rights/Fundamental Rights violation has occurred, you are entitled to make a complaint at the Human Rights Commission of Sri Lanka (HRCSL)

### Complaint can be made in writing or verbally

- A complaint can be made in Sinhala, Tamil or English
- Complaint forms can be obtained free of charge from the HRCSL (head office or regional offices), or from the HRCSL website <https://www.hrsl.lk/home/>
- Complaint can be lodged in person, sent by post, by email, by fax or by giving information through the HRCSL hotline
- Find Complaint form here: <https://www.hrsl.lk/wp-content/uploads/2020/03/Complaint-Form-final-new-01-01-2020-1-2-1.pdf>
- Submit complaint here: <https://www.hrsl.lk/make-a-complaint/complaint-form>

If you are unable to submit a complaint in writing, you can request for an officer to receive the complaint verbally

### What information should be included in a complaint?

- Identify the rights that have been violated.
- Identify person whose rights have been violated.
- Identify who is responsible for the violation/s.
- In what manner were the rights violated.
- Where and when did the violation take place.
- What remedies you seek.

## Who can make a complaint to the Commission?

- A victim or a group of victims of fundamental rights violation (or imminent violation)
- A person or a group representing the victim(s) of rights violation
- If reported in the media or the HRCSL receives information HRCSL can intervene even without a specific complaint made by a victim(s)
- The Commission can investigate and inquire into fundamental rights violations on its own motion, without a complaint being made as well.

## Procedure

If the complaint falls within the Commission's mandate; A preliminary inquiry is conducted to determine whether there are enough grounds to proceed with the case or not. The case will be examined by, Calling the Petitioner, Calling for a report from the Respondent /s. If there is a prima facie case (a valid case from the look of it at the first instance); Inquire into the matter and attempt to resolve through mediation. If mediation fails a recommendation can be made to the relevant authorities if a violation of a FR is found. Mediation or conciliation is not used if the complaint is regarding deprivation of liberty or torture.

## Complaints can be made to any of the HRCSL offices;

- Head Office in Colombo (No 14, R. A. De Mel Mawatha, Colombo 04, Sri Lanka.)
- One of the 10 regional Offices (Ampara, Anuradhapura, Batticaloa, Kandy, Badulla, Jaffna, Kalmunai, Trincomalee, Vavuniya, Matara)
- Sub Office in Puttalam
- Complaints can be made at any of these offices, regardless of where the violation occurred

## Redress for FR Violation: Ombudsman

The Office of the Parliamentary Commissioner for Administration (Ombudsman) could be considered as a key institution through which any person can seek relief when his/her fundamental rights are violated or other similar injustice is caused by administrative decisions taken by the officials of the State or Public Corporations, Local Government Institutions or other similar institutions in order to avoid such injustices.

It is an office established under Article 45 of the 19th Amendment to the Constitution read with Article 156 of the Constitution of

the Democratic Socialist Republic of Sri Lanka. The Ombudsman is appointed by the President.

Main function of the Ombudsman is to make fair recommendations, having conducted inquiries upon receiving complaints of violation of fundamental rights or other similar injustices which have been or is being or likely to be caused imminently, by the acts of a public officer, an officer in Provincial Councils or an officer of Public Corporations or another similar institution.

### **Essential information to be included in a complaint**

- Complaint shall clearly and briefly be written in simple language. (Sinhala, Tamil or English)
- It is necessary to state clearly, the decision against which the complaint is made and the officer against whom the complaint is lodged and the position he holds along with his/her address.
- It is more appropriate to annex photocopies of important documents to prove the injustice alleged to have caused. Originals of those documents shall not be annexed.
- Relief sought by the complainant shall clearly be mentioned at the end of the complaint.

If it is difficult to come to a conclusion by exchanging correspondence, the matter is fixed for inquiry after summoning all the parties concerned and the Ombudsman then makes appropriate recommendations after holding an independent inquiry. Eventually, measures are taken to inform in writing, the decisions /recommendations /suggestions made by the Ombudsman to the complainant and to the relevant officials. The Ombudsman requests the respondent party to implement such decisions /recommendations/ suggestions within a specific period of time.

If a Head of an Institution (Authorized Officer) does not implement satisfactorily the said recommendation or no action is taken within the specified period, the Ombudsman forwards a copy of his final report together with the recommendation to the President and to the Parliament in accordance with the provisions stipulated in the Act, having considered the observations in depth, if any, made by the Head of the Institution.

Obtaining assistance of an Attorney-at-Law or any other person to defend the complainant is not allowed in terms of the provisions of the Act. However, when the complainant is physically unfit or is having infirmities; assistance of his/her relation or benefactor could be obtained at the discretion of the Ombudsman.

### Complaints which may not be investigated by the Ombudsman

- Requests for employments/houses. (Section 10(2) of the Act)
- Matters relating to public security and the matters in relation to the provisions in the Public Security Ordinance. (Section 11(b) (i) of the Act)
- Complaints connected with the terms and conditions of the service of any person who is or was a member of the Armed Forces, Police Force or other Forces charged with the maintenance of public order. (Section 11(b)(iii) of the Act)
- Matters in which a decision has been pronounced or being heard in a court of law. (Section 11(b)(iv) of the Act)
- Complaints regarding appointments, transfers, dismissals or disciplinary control of public officers. (Section 11(b)(v) of the Act)
- Complaints regarding the matters which are being or had been subjected to auditing by the Auditor General. (Section 11(b)(vi) of the Act)
- Complaints made after a lapse of a long period of time. (Unreasonable Delay) (Section 13(1)(c) of the Act)
- Matters relating to public policies or cabinet decisions.
- Election issues of the Commissioner of Election.
- Complaints against disputes among private parties including private companies.
- Anonymous or unsigned complaints

### Summaries

There are three ways to seek a remedy for Fundamental Rights violations. The first is to petition to the Supreme Court. According to Article 126 of the Constitution, you can seek a remedy for an infringement of imminent infringement of a Fundamental Right by petitioning within 1 month of such violation. Usually, this must be done by the person whose rights are violated or their lawyer.

You can also apply to the HRCSL or write to Ombudsman seeking a remedy.

## Session 04: Rights in case of arrest and detention

*A brief discussion.*

### Time

45 minutes

### Target group

All groups

Approximately 30 participants in a group

### Objectives

At the end of this session, the participants will be able to:

- Describe the rights available to a person who is arrested or detained
- Know the basic procedure which will be followed in the event of an arrest

### Tools needed

- Whiteboard & markers
- Projector & screen

### Preparation

- Slides

### Steps

- Explain that in this session, the participants will learn about arrest and detention.
- Ask the participants what rights should be available to a person who is arrested. They may draw inspiration from TV or film. The participants can discuss in pairs and write down 3 rights which they think should be available to a person who is arrested or detained so that their human rights are protected. Give the participants 10 minutes for this exercise.
- Ask the room what they wrote down and consolidate responses on the whiteboard.
- Note that most participants will have similar responses. Highlight new and different responses.
- Once all participant pairs have contributed, proceed to the presentation assisted by slides, the notes for which can be found in the 'Notes' section below.

## Notes

### Rights in case of arrest or detention

You still have fundamental rights even if you are arrested. The Constitution guarantees as Fundamental Rights freedom from arbitrary arrest, detention and punishment in Article 13.

This means that arrest, detention and punishment need to be done according to the law.

Regardless of one's SOGIESC, no person shall be arrested except according to procedure established by law.

- Any person arrested shall be informed of the reason for his arrest.
- If arresting officer is not in uniform, they must identify themselves by stating their name, designation, number and police station
- Every person held in custody or detained shall be brought before the judge of the nearest competent court
- One can only remain in custody, upon arrest without a warrant for no more than 24 hours

Upon arrest, Police officer must inform person being arrested, the reason for their arrest

- In case of a search, one must be told the reason for the search and cause for reasonable suspicion
- If a woman, a Female Police Officer must be present during the arrest
- You are entitled to request that you be taken to the station in order to submit to a search

Upon Arrest, police officer has a duty to inform the arrested persons acquaintance, friend, family or attorney informing them of their arrest.

If you are placed in custody, you can request for basic amenities to be brought to you such as clothes, water and food.

The Constitution guarantees as a Fundamental Right freedom from torture in Article 11. This means that while a person is in custody, the Police cannot beat, physically punish, verbally abuse, or sexually abuse any person. This Fundamental Right cannot be deviated from in any situation. These rights apply regardless of a person's SOGIESC or occupation. That means all people- including those who are in sex work, those who are gay, lesbian, bisexual, intersex, or transgender- everyone is entitled to these rights.

### Note to Facilitator

- Ask the participants if they think there are any instances where it is okay for the Police to beat a suspect.
- Explain that a confession is not admissible in Court in any case. Only the evidence discovered as a result of the confession can be admitted. Prevention of Terrorism Act is an exception.
- Explain the need for protection from torture in all cases.
- You may use the case of *Gerald Mervin Perera* [2003] 1 SLR 317<sup>2</sup> as reference.

### In case of police misdoings, if you wish to make a complaint about the actions of Sri Lanka Police;

- Any person who is aggrieved by an act of a Police Officer or Police Service may lodge a complaint with the Public Complaints Investigation Division (PCID) or any of the Provincial Offices of the National Police Commission.
- There shall be a Provincial Director appointed for each Province who shall be in charge of the investigations into the public complaints received by the Provincial Office. He shall report direct to the Director, PCID at the Commission.
- Any public complaint received against a Police Officer or the Police Service shall be acknowledged by an authorized officer within one week.

If arrested with or without warrant, it is advisable to **immediately request the presence of legal counsel.**

### Note to Facilitator

- Prior to the session, be informed of the evidence of sexual torture against transgender people and sex workers in Sri Lanka.
- Reading: Andrea Nichols, '*Dance Ponnaya Dance: Police Abuse Against Transgender Sex Workers in Sri Lanka*', 2010 <https://journals.sagepub.com/doi/10.1177/1557085110366226>

### Summaries

People still have Fundamental Rights when they are arrested or detained. A basic right is that the process of arrest and detention must be done according to law. Freedom from torture is an absolute right that cannot be derogated from. Any form of torture while in detention or custody is a fundamental rights violation for which the aggrieved person can obtain a remedy under Sri Lanka's law.

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<sup>2</sup> <https://www.lawnet.gov.lk/wp-content/uploads/2016/11/037-SLLR-SLLR-2003-1-SANJEEWA-ATTORNEY-AT-LAW-ON-BEHALF-OF-GERALD-MERVIN-PERERA-v.-SURENDRA-OFFI.pdf>



## Session 05: Redress for a criminal offence or a FR violation in practice

*Role play*

### Time

2 hours

### Target group

All groups

Approximately 30 participants in a group

### Objectives

At the end of this session, the participants will be able to:

- Analyse a given situation of criminal offence or FR violation, and determine the best course of action to seek justice
- Understand how to use the existing redress mechanisms to obtain a positive outcome

### Tools needed

- Print out of the Annex at the end of this session plan

### Preparation

- None

### Steps:

- Recall the first session of the day where the participants distinguished between crime and a human rights violation. Explain that in this session, the participants will act out the same scenarios and find out suitable redress mechanisms.
- Divide the participants in to 5 groups.
- Distribute the printouts of scenarios among the groups (found in the annex proceeding the session plan), giving 1 scenario per each group.
- Request each group to think of some challenges the protagonist/s may face. And how will they overcome the challenges. Request the groups to find out the best way in which the protagonist/s can achieve positive/ desirable outcome.
- The groups are allowed to be creative and may use humor.
- Give the participants 30 minutes to come up with a 6-8-minute skit.
- Attend to each group at least once and support them.
- After each group presents, give them a round of applause and summarize the key features of the scenario – identify the challenges faced by the protagonist/s and how they overcame such challenges. Highlight any good practices- such as being aware of the law or seeking

- legal counsel. Explain how maintaining a calm and collected composure, & clear and assertive but non-violent communication is important in negotiating a desirable outcome.
- Since this is the last session of the training, give the participants an opportunity to ask a question from this session, this day, or the entire workshop.
  - If there is any time remaining, you may invite the participants to share the most memorable thing from this training.

## Summaries

Today we discussed how to seek a remedy with regard to a criminal offense, or a fundamental rights violation.

Criminal offenses are found in Sri Lanka's Penal Code. Hurt, murder, sexual assault, rape, extortion, defamation, and theft are some common examples of Penal offenses. The offense of sexual harassment includes sexual harassment committed online and offline. If you face a criminal offense, the best course of action before you are to visit a Police Station. Before visiting a Police Station, you must have decided what is the remedy you seek. The responsibility to prosecute a criminal case is with the State. The Police will contact or apprehend the suspect. If the offense is a minor crime, you will be referred to mediation boards. If you are unable to come to a settlement, the matter will go to court.

Human rights are recognized in National and International law. These are rights that you have simply by virtue of being a human being. These rights are universal and inalienable. The National law recognizes certain civil and political rights, as fundamental rights. These are recognized in the constitution. These rights are enforceable against the state – if fundamental rights are violated, or about to be violated, by executive or administrative action, one can go to the Supreme court with a fundamental rights petition. You can submit a fundamental right petition by yourself, or by a lawyer, within one month of fundamental right infringement.

Learning the law is the first step towards the ability to obtain a just remedy. Every citizen has a responsibility to learn the law. Being aware of the law helps us take fast action if our rights are violated.

However, you may note that practical implementation of the law brings with it certain unique challenges. The justice system or law enforcement may have certain biases against people with diverse SOGIESC. However, you are aware that all people are entitled to be treated equally before the law, and to equal protection of the law. Factors such as your knowledge about rights and redress mechanisms, and the strength of your networks helps positively influence your outcomes.

## Annex

1. Mervin is a transgender activist. He is living together with his girlfriend Roshni in Piliyandala. For International Day Against Homophobia, Transphobia and Biphobia Mervin speaks at a press conference and criticizes an emerging youth political group "One Country Movement" whose messaging is extremely transphobic. The leader of "One Country Movement" Malan used to be a classmate of Mervin at the University and has come to Mervin's house for drinks. So, Malan knows where Mervin lives. Angered by Mervin's press conference Malan send a group of thugs to Mervin's house the following night. Thugs beat Mervin and sexually assaults Roshni. They also force Mervin to give the computer password and take his computer.
2. Sarath who is gay is living alone. He is 70 years old. One day two young men, Amal & Kamal, break into his house and steal a valuable watch. Sarath makes a complaint at the Police station. The Police calls the two men who broke into his house and Saratha to the Police station the following day. Kamal's older brother is a close friend of the OIC of the Police Station. Kamal's brother calls the OIC and says that Kamal has got into a small trouble and asks to sort it out. When Amal and Kamal come to the Police station, they say that Saratha invited them into the house and made sexual advances. Amal and Kamal refused and left but didn't take anything at all. The Police tells Saratha that this seems to be the truth. When Saratha asks the Police to write down the complaint, they refuse.
3. Savani is working at the Department of Education in Colombo. She is gay. She is 40 years old and is living with her parents. Despite all her hard-work she has never been promoted. She knows she is next in line for a promotion. However, she finds out that she will be not considered for the promotion. She approaches her Supervisor Malani and asks why she is not considered for the promotion. Malani explains that because Savani is gay, a promotion will make it look like Malani is promoting a new culture and it will not be good for the Department.
4. Sean is a 14-year-old student in one of the government schools in Sri Lanka. He has a crush on Ramon, a classmate. One day Sean writes a love letter to Ramon and it is found by the school teacher. The teacher gives it to the Principal. The Principal calls Sean's parents to the school and ask them to remove him from the school. Sean's mother is a lawyer and she is not willing to take Sean out of the school. In fact, she thinks this is a FR violation and is going to take action.
5. Jenelle is a young transwoman. One day, while she is driving to work, the Police stop her vehicle at a routine check point. When they see that her driver's license shows her name is Jason and sex as male, they arrest her for 'cheating by impersonation'. Once she is taken to the Police, 2 officers scold her saying that she is a threat to the society. One officer squeezes her breast 'to see if they are real'.

## ABBREVIATIONS

UDHR	Universal Declaration of Human Rights
ASP	Assistant Superintendent of Police
PCID	Public Complaints Investigation Division
LAC	Legal Aid Commission
HRCSL	Human Rights Commission of Sri Lanka





BRIDGE to Equality - BRIDGE project which aims to improve the protection of human rights for LGBTQ people in Sri Lanka through the use of international human rights law to enable justice actors (judges, lawyers and other legal professionals), activists and human rights defenders to improve justice outcomes for the LGBTQ community; with a focus on overcoming challenges imposed by the current legal framework, as well as the overall promotion and protection of human rights of LGBTI people.

BRIDGE is jointly implemented by DAST, National Transgender Network and Young Out Here in partnership with the International Commission of Jurists since 2021.

 [facebook.com/BridgetoEquality](https://facebook.com/BridgetoEquality)

 [instagram.com/bridgetoequality2021](https://instagram.com/bridgetoequality2021)

 [twitter.com/B2ECampaign](https://twitter.com/B2ECampaign)

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