

Three decorative circles of varying sizes, each composed of three overlapping semi-transparent layers in shades of orange and red, are positioned on the right side of the cover. Thin orange lines connect the corners of the title box to the circles.

TRANSGENDER PEOPLE'S ACCESS TO SEXUAL HEALTH AND RIGHTS: A STUDY OF LAW AND POLICY IN 12 ASIAN COUNTRIES

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TABLE OF CONTENTS

Glossary	2
Abbreviations	2
Table of Figures	3
Why this Study?	4
Objectives and Methodology	8
State and Sexuality	9
Human Rights Violations: Current Scenario	11
(A) Stigma, Discrimination and Other Forms of Violence	11
(B) Identity Documents/ Titles	16
(C) Education	17
(D) Health	18
(E) Employment	21
(F) Housing	22
(G) Marriage	23
Affirming Rights: Case Studies	23
(A) The Case of Nepal: Supreme Court Litigation	23
(B) The Case of Thailand: Constitutional and Law Reform	26
(C) The Case of Tamil Nadu, India: Affirmative Action	28
Conclusion and Recommendations	31
Acknowledgements	37
Endnotes	38
References	40

GLOSSARY

Aravani	Tamil term for <i>hijra</i> ; also called <i>thiru nangai</i> .
Butch	Term used in queer subcultures to describe masculine traits or gender performance.
Chhakka	Derogatory term for <i>hijra</i> .
Fatwa	In Islam, a religious opinion concerning Islamic law issued by an Islamic scholar.
Hijra	Term possibly of Urdu origin, referring to one who is neither man nor woman. In contemporary queer subculture, they are often referred to as transgender. In the Indian subcontinent, they live in separate communities having distinct social structure and codes, and are mostly intersex or biologically male.
Kathoey	Thai term referring to a transwoman or effeminate gay man.
Kinnar	Hindi term for <i>hijra</i> .
Mak Nyah	Malaysian term referring to a transwoman.
Meti	Nepali term referring to a transwoman.
Pak Nyah	Malaysian term referring to a transman.
Sharia	Islamic law
Transgender	Refers to persons whose gender identity or expression does not match the gender associated with the sex assigned to them at birth.
Transman	A person who, assigned the female sex at birth, expresses their gender as masculine, boy or man.
Transsexual	A person who changes their physical sex through medical, surgical and/or other procedure(s).
Transwoman	A person who, assigned the male sex at birth, expresses their gender as feminine, girl or woman.

ABBREVIATIONS

BDS	Blue Diamond Society, Kathmandu, Nepal
ICPD	International Conference on Population and Development
ICPD PoA	ICPD Programme of Action
LGBT	Lesbian, Gay, Bisexual, Transgender
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex
MSM	Men who have Sex with Men
STI	Sexually Transmitted Infection

TABLE OF FIGURES

Box 1: Snapshot of Sexuality in the Region: The Past Five Years	5
Box 2: Portions of the ICPD PoA That Can Be Used to Advocate for Transgender People's Rights	7
Figure 1: The Sign Outside the Toilet for Transgender Students at the Kampang Secondary School	17
Table 1: Recommendations for Governments, NGOs and Donors	34

WHY THIS STUDY?

“Sexuality is a critical and strategic frontier in which the possibilities of justice, democracy and secularism are at play.”

Correa and Careaga, 2004

The 1994 International Conference on Population and Development, conducted with a spirit of inclusion, cooperation and consensus, fostered hope for State initiated policies and programs based on human rights, gender equity, reproductive health and rights, and partnership with civil society (Germain and Kyte, 1995). As we near completion of fifteen years since the Conference, it is critical to reflect on progress made globally in the areas of population, development, sexual and reproductive health rights, and gender equality. Towards this, ARROW (Asian-Pacific Resource and Research Centre for Women), a women’s organisation working on women’s health and rights, has undertaken a project every five years to monitor progress in these areas. This study is part of ARROW’s ICPD@15 years monitoring project which includes 12 Asian countries – Bangladesh, India, Nepal, Pakistan, China, Cambodia, Laos, Thailand, Vietnam, Indonesia, Philippines and Malaysia.

This study was commissioned to examine and report on issues related to sexuality in the 12 Asian countries. This is significant because feminist theory and activism has not always examined or understood the links between gender and sexuality, and how these influence experiences of injustice and achievement of rights. Sexuality is recognised, variably, in sections of civil society, United Nations’ institutions, donor agencies and governments to be a central aspect of personhood which affects all individuals, families, communities and societies. Also recognised are the links with health, reproductive health and rights, livelihood, poverty, survival and life and these are demonstrated by social movements focusing on abortion, HIV and AIDS, LGBTI, sexual violence, genital mutilation and other issues. Thus, while the ICPD PoA falls short of addressing the

multiple aspects of sexuality, it is valuable in that it recognises the centrality of sexuality in women's rights and adolescent needs, includes within the definition of reproductive health a satisfying and safe sex life, and calls for accessible sexual health care and sexuality education for all.

In the past few decades, sexuality has increasingly been established as an integral aspect of personhood. Therefore, States, being responsible for facilitating realisation of one's fullest potential, should ensure that people are able to freely develop and express their sexuality. However, what we find prevailing is a continued regulation of sexuality and all related matters, by societies and governments using instruments such as education, religion, law and policy, seeking to enforce a sexual discipline that emerges from a hetero-normativeⁱ framework that favours the heterosexual male. Such regulation of sexuality, more often than not, impacts sexual and reproductive rights of people, some groups of people more so than others. For example, adolescents and young people, the elderly, women – especially single women, sex workers, and people marginalised on the basis of their sexual orientation, gender identity and expression (including lesbian, gay, bisexual, transgender and intersex people) – are disproportionately affected. They experience social and/or systemic exclusion, various forms of violence including stigma, discrimination, physical and sexual violence, or criminalisation.

Snapshot of Sexuality in the Region: The Past Five Years

2003

Indonesia's Justice Ministry reviewed several laws and drafted regulations to ban gay sex, cohabitation, oral sex, anal sex, extramarital and pre-marital sex.

2004

In India, a video clip recorded by a male school student on his mobile phone of his girlfriend performing oral sex on him was passed around via e-mail and sold on discs. Subsequently, mobile phones were banned in schools.

2005

Two girls from a small town in India eloped to get married to each other. Elsewhere in the country, a lesbian couple tried to commit suicide. Section 377 of the Indian Penal Code is used to harass and charge gay men and women.

2006

Cambodia's Prime Minister banned the use of mobile phones with video features and 3G technology for fear that they may be used to spread pornographic videos and increase sexual exploitation of women and children. He said that the country should wait 10 years before allowing these and in the meantime, the morality of its society should be strengthened.

An Indian woman athlete was made to take a gender test and failed. She was stripped of her silver medal for a race.

2007

Adolescent education program textbooks were banned in 11 states of India due to the "graphic" illustrations and "inappropriate exercises."

Box 1: Snapshot of Sexuality in the Region: The Past Five Years

In Asia, the fear of the sexual immorality of certain classes of people and communities caused the colonial State to criminalise certain tribes and enact anti-sodomy laws in the colonies. These impositions were tools of power, which sought to subdue and divide the

subjects. These continue in the post-colonial era and are seen to mirror social values and morals while serving as instruments of social control (Human Rights Watch, 2008). Most of the countries included in the study are living with these alien, colonial legacies while social morals in the colonising countries have changed in the past decades. In current times, there has been a rise of fundamentalism in the region which signifies the strong nexus between religion, nationalism and patriarchy, and rigidly seeks to further regulate sexuality. Hence, it was considered important to map trends in sexuality and monitor how governments have upheld their commitment to ensure access of all people of appropriate ages to reproductive health (7.6, ICPD PoA), which implies that people are able to have a satisfying, healthy and safe sex life (7.2, ICPD PoA).

Of the different groups of people marginalised for their sexuality, transgender people's health needs, experiences and access to rights have had limited documentation. There is existing literature and scholarship on histories of third sex, third gender and transgender identities in Asia (including Sanders, 2008; Slamah, 2005; Sukthankar, 2005 and some titles included in the Suggested Readings section of this report). There also exists documentation of the present-day social position, marginalisation, discrimination and violence faced by transgender people (including Sanders, 2008; Revathi, 2005; Slamah, 2005; PUCL-K, 2003; and Teh, 2001). However, the status of their access to reproductive and sexual health and rights has had limited documentation, and thus has been the subject of this study. This is significant because feminist activism has often had a very troubled relationship with transgenderism over concerns that it enacts and reinforces gender stereotypes. As a result, transgender issues have rarely been included in discourses, research and programs on women's health and rights. Similarly, the broader health and development movements have rarely included transgender issues, with the exception of HIV and AIDS movements in which the focus has also been on disease prevention and service provision and less so on empowerment and rights.

The ICPD was a landmark conference for recognising that progress could not be made with respect to health, sustainable development, population, human rights and poverty eradication without State investment in health, provision of comprehensive sexual and reproductive health information, services and supplies for all people, and advancement of

gender equality. Movement towards such progress requires supportive law and policy. State policies and law create the political environment for affirmation and realisation of human rights or systemic violations. It is within this environment that societies evolve, governments function, public services including health care are provided, and people can realise their rights or seek redress in case of violations. Hence, this study focuses on how State policies and law in the 12 Asian countries studied advance or prevent transgender people's access to reproductive and sexual health and rights.

There have been recent developments in parts of Asia such as Nepal, Tamil Nadu (in India), Thailand, and parts of China that have recognised citizenship of transgender people, affirmed their rights, and enforced policies for their advancement, including access to education, health, housing and family formation. Nepal's Supreme Court passed a judgement that recognised LGBTI persons as "natural persons" and instructed the government to change laws and policies that discriminate against them and enforce laws that protect them from discrimination. The Tamil Nadu government started issuing ration cardsⁱⁱ to *aravanis*, constituted a Transgender Welfare Board, conducted a census of *aravanis* and issued an order that they can share 30% of seats reserved for women in government-owned and government-aided arts and science colleges. Thailand's new constitution states that all people shall enjoy equal rights and protection under the law regardless of their sex, and the attached explanation states that this includes men, women and people of other gender identities. Some jurisdictions in China have laws that recognise transgender people in their new gender (Sanders, 2008). It is important to analyse these developments and the factors that brought them about so that lessons from these situations can be replicated or adapted by movements in other parts of Asia and the world.

While the ICPD PoA was conceived using a binary framework of gender and, therefore, does not make a specific mention of the needs and rights of transgender people, it states the right of all people to the highest standard of sexual and reproductive health (7.2, ICPD PoA); this includes transgender people. Hence, States are required to create and implement laws, policies and programs that facilitate transgender people's access to education, health and livelihood, and eliminate social and legal discrimination faced by

transgender people. With five years remaining before the completion of the 20-year period to which governments have committed to achieving several things (among them universal access to reproductive and sexual health), States can still take steps to do so, including implementation of the recommendations at the end of this report.

The following box lists portions of the ICPD PoA that can be used to advocate for transgender people's rights:

All human beings are born free and equal in dignity and rights. **Everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights**, without distinction of any kind, such as race, colour, **sex**, language, religion, political or other opinions, national or social origin, property, birth or other status. Everyone has the right to life, liberty and security of person. (Principle 1)

Human beings ... are entitled to a healthy and productive life ... Countries should ensure that all individuals are given the opportunity to make the most of their potential. They have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation. (Principle 2)

Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. States should take all appropriate measures to ensure ... universal access to health-care services, including those related to reproductive health care, which includes family planning and sexual health. (Principle 8)

... basic right of all couples and individuals to ... attain the highest standard of sexual and reproductive health. (Paragraph 7.3)

Reproductive health care in the context of primary health care should, inter alia, include: family-planning counselling, information, education, communication and services; ... prevention and appropriate treatment of infertility; ... treatment of reproductive tract infections; sexually transmitted diseases and other reproductive health conditions; and information, education and counselling, as appropriate, on human sexuality, reproductive health and responsible parenthood. (Paragraph 7.6)

To achieve universal access to quality education, with particular priority being given to primary and technical education and job training, to combat illiteracy and to eliminate gender disparities in access to, retention in, and support for, education; to introduce and improve the content of the curriculum so as to promote greater responsibility and awareness on the interrelationships between population and sustainable development; health issues, including reproductive health; and gender equity. (Paragraph 11.5)

... contribute to the understanding of factors affecting universal reproductive health, including sexual health, and to expand reproductive choice. (Paragraph 12.11)

Governments ... should increase support for ... research to strengthen reproductive health services ... (Paragraph 12.12)

... promote socio-cultural and economic research that assists in the design of programmes, activities and services to improve the quality of life and meet the needs of individuals, families and communities, in particular all underserved groups; ... understand that sexual and reproductive behaviour occurs in varying socio-cultural contexts, and to understand the importance of that context for the design and implementation of service programmes. (Paragraph 12.20)

There is also growing recognition that population-related policies, plans, programmes and projects, to be sustainable, need to engage their intended beneficiaries fully in their design and subsequent implementation. (Paragraph 13.2)

Box 2: Portions of the ICPD PoA That Can Be Used to Advocate for Transgender People's Rights

OBJECTIVES AND METHODOLOGY

The purpose of this report is to describe how laws and policies in the 12 Asian countries studied here impact – whether violating or affirming – health and rights of people marginalised on the basis of their sexuality and gender identity, particularly transgender people. The findings will serve as a resource for advocacy groups to demonstrate to legislators and policymakers how progressive laws and policies relating to gender and sexuality can empower marginalised communities, reduce stigma, discrimination and violence, improve access to essential information as well as reproductive and sexual health services and facilitate constructive social engagement. The report intends to highlight transgender issues including access to reproductive and sexual health and rights so that these may receive greater attention in research, programs and policies. Using gender, sexual rights and human rights frameworks for analysis, this report makes recommendations to governments and civil society actors for law, policy and programs to affirm transgender people's rights and improve their access to health services so as to meet commitments made in the ICPD PoA.

In order to do this, three methods were employed. First, existing literature on health and rights of transgender people was reviewed, with a particular focus on writings from Asia. Second, two sites – Nepal and Thailand – were examined for legal and policy positions and levels of social acceptance of transgender people, their access to education, health services including sexual health, livelihood options and citizenship benefits in accordance

with gender identity, as well as related advocacy efforts towards these. In addition to this, the State policies and advocacy efforts in Tamil Nadu in India were studied briefly for the positive developments there. Third, data collected by ARROW's partner organisations in the 12 countries on sexual health and rights indicators including law and policy related to homosexual acts and transgender behaviour, sexual violence and sex work, were collated for this study.

For the two country case studies, 30 informants were interviewed in Kathmandu, Lalitpur and Narayangarh in Nepal, and Bangkok in Thailand, including transgender people, LGBTI rights activists, sexual rights activists, people working on HIV and AIDS management, lawyers, counsellors, medical personnel, researchers and a Human Rights Commissioner. Additionally, 3 transgender informants were interviewed in Chennai in Tamil Nadu – an activist for transgender rights, a writer and activist, and a student. Given and preferred names of all respondents have been used in this report, with their expressed consent.

STATE AND SEXUALITY

Laws and policies can both promote and regulate sexuality. These include laws pertaining to homosexuality or homosexual acts, cross-dressing, sex reassignment, sex work, age for consent to sexual relations, rape, marital rape, marriage, etc; and policies pertaining to sexuality education, sex reassignment, etc. A study of the 12 countries by ARROW partner organisations revealed the following picture:

- (i) Bangladesh, India, Malaysia and Pakistan retain versions of the British law that criminalises sodomy. In July 2009, the Delhi High Court has excluded adult consensual sexual acts in private from the purview of this law.
- (ii) In 2008, the Supreme Court (SC) of Nepal ordered the government to amend all laws that discriminate against LGBTI people.
- (iii) In Philippines, an anti-discriminatory bill to protect LGBTI rights is pending in Congress.

- (iv) In Malaysia, a *fatwa* was issued against cross-dressing and sex reassignment operations except for “hermaphrodites.” Non-Muslim *mak nyah* can be charged with “indecent behaviour” for cross-dressing under the Minor Offences Act 1955ⁱⁱⁱ.
- (v) None of the 12 countries reviewed here allow same sex marriage. In Nepal, the SC order to amend discriminatory laws includes mention of marriage laws. Cambodia’s king called for legalisation of same sex marriage and while this has not progressed, the debate has started.
- (vi) Only the state of Tamil Nadu in India provides sex reassignment operations within public sector health care.
- (vii) Most of the 12 countries do not legally recognise change of a person’s sex^{iv}. In Nepal and Tamil Nadu, one can get an identity card with a “third gender” category. After sex reassignment surgery in Indonesia, a transgender person’s gender can be changed by a judge in a local court having jurisdiction over the person’s place of residence in the same manner as a change of name.
- (viii) Rape laws in 11 of the 12 countries do not offer protection for men or transwomen. Only Thailand’s law offers protection for all.
- (ix) Marital rape is not considered an offence in Pakistan, China, Laos and Bangladesh.
- (x) Girls below the age of 16 cannot consent to sex in India and Malaysia. It is considered statutory rape.
- (xi) Sex work:
 - Sex work is illegal in Pakistan (sex outside marriage is illegal and therefore sex work is illegal), Laos, Cambodia, China, Thailand.
 - While the law in Nepal is silent on sex work, sex workers are arrested for “public offences.”
 - Sex work is not illegal in India, Malaysia, Indonesia and Philippines. In India and Malaysia, the following are penalised: soliciting, brothel keeping, and living off earnings of prostitution of another person. In Malaysia, having more than 3 condoms in your bag is considered proof of

prostitution as interpreted by the police. This approach recognises sex work as a “necessary evil” and subjects it to legal limitations.

- In Philippines, there is a move to decriminalise sex work.
- (xii) Various approaches to sexuality education are being adopted in the 12 countries; none of them is comprehensive, or focused on empowerment:
- In China, since the ICPD, the government has tried to mainstream sexuality education in school. However, the curriculum needs to be more comprehensive regarding sexuality as well as sexual and reproductive health.
 - In India, the National AIDS Control Organisation’s adolescent education program curriculum was banned in several states in 2007. It was later reviewed and a less comprehensive version released in 2008.
 - In Nepal and Laos, only reproductive health is taught using biology textbooks.
 - In Pakistan, Philippines and Indonesia, there is no government-supported sexuality education. Only NGOs provide sexuality education in schools.
 - In Malaysia, the Ministry of Women, Family and Community Development adopted an NGO-produced adolescent reproductive health module and put it up on their website. However, this has yet to be implemented.
 - In Thailand, sexuality education is implemented in schools but is not included in the compulsory teaching curriculum. The government encourages implementation but does not enforce it.
 - In Cambodia, the Ministry of Education, Youth and Sport, through its inter-departmental committee on HIV/AIDS, expanded its sexual and reproductive health activities in school settings through the Life Skills for HIV/AIDS Program.

It is clear that many aspects of sexuality are impacted by State policies and laws. In the case of transgender people, some policies and laws in the studied countries fail to recognise their gender expression and identity, such as the lack of a third gender category

in identification and citizenship documents in Thailand, Malaysia, Philippines, Indonesia, Pakistan, Bangladesh and other countries, or that the Islamic law in Malaysia is against cross-dressing and sex reassignment operations. Apart from Indonesia, none of the countries legally recognise a post-operative transsexual person's change of sex.

Laws in all the 12 countries discriminate against transgender people's right to choose their partner and consensual marriage (as per working definition of sexual rights developed at an international technical consultation on sexual health convened by the World Health Organization in January 2002) by allowing marriage only between a man and a woman. Similarly, laws in Bangladesh, India, Malaysia and Pakistan discriminate against transgender people's right to a satisfying and safe sex life (7.2, ICPD PoA, definition of reproductive health) by criminalising sexual acts against the order of nature, interpreted as all acts other than penile-vaginal intercourse, including specifically anal and oral sex.

Apart from Thailand, laws in none of the countries studied recognise that transwomen can also be raped and penalised the same, thus not providing protection or legal recourse to this section of people in the face of crimes perpetrated against them. As mentioned before, the social ostracism and marginalisation faced by transgender people is well documented, resulting in many transgender people taking up sex work as an occupation due to lack of formal education, skills training and work opportunities. Laws against sex work in Pakistan, Laos, Cambodia, China and Thailand serve to criminalise their chief means of earning a livelihood.

In the following sections, this report describes societal prejudice, discrimination and other forms of violence faced by transgender people, and demonstrate how a lack of affirmative political infrastructure in the form of laws and policies affects transgender people's rights to education, health, housing, employment, and a life of dignity and respect. It then documents advocacy efforts and analyses political factors that led to rights affirming changes in laws and policies in Nepal, Thailand and Tamil Nadu in India. Finally, it makes necessary recommendations not only for governments but also for civil society organisations, advocates and donors. All of these actors are responsible for promoting human rights.

HUMAN RIGHTS VIOLATIONS: CURRENT SCENARIO

This section of the report describes societal prejudice, discrimination and other forms of violence faced by transgender people. It also demonstrates how a lack of affirmative political infrastructure in the form of laws and policies affects transgender people's rights to education, health, housing, employment, and a life of dignity and respect. While doing this, it draws upon the text of the ICPD PoA as well as the Yogyakarta Principles^v (YP, 2007) – rights violations as per the YP, 2007 have been indicated thus. This also serves to highlight the continuity in the ICPD PoA from fifteen years ago and other recent human rights instruments.

(A) STIGMA, DISCRIMINATION AND OTHER FORMS OF VIOLENCE

A few years ago, in my village, Naikap, people used to abuse and insult me. They didn't know about transgender people, that there are others like me. I used to think, why has God made me like this? People would say - there are organisations for hijras, chhakkas; go there. I thought - I am not a chhakka, why should I go ...

I love a girl. Both our families learned about us. My partner's family insisted she marry a man, and wouldn't let us meet. We ran away from home, from Jhapa to Biratnagar. We got married and took a room together. We had very little money. We had a mobile phone and her family used to call a lot. They said to come back or else they would get us beaten up. We didn't care. We would live together and die together.

We tried to find work but were unsuccessful. When I applied for jobs advertising for women, they told us we didn't seem like women. One day some BDS transwomen workers stopped to talk to me and asked me who I was. I was very apprehensive to talk to them. They told me they work on human rights violations and called me to their office on a Saturday. We went and found many transwomen there; we found it very embarrassing. I wondered if it was an office of *hijras*. My wife said we should stay away from them.

Later, we realised that they were similar to us and asked them for work. We came to Kathmandu. I underwent driver's training for three months. Later I got a job at BDS as Human Rights Program Manager and have been doing this job for three months. My wife is about to start training at the beauty parlour.

My family used to think I was a hijra and asked me to

Bhoomika Sreshtha, Kathmandu

Family, society and institutions in Nepal do not understand issues of gender and sexuality. They cannot understand why some men are gay, or why some people are transgender. They don't understand why men cannot behave like "real men." They ridicule these men.

Devendra Sreshtha, Narayangarh

(Right to non-discrimination, Principle 2, YP, 2007)

These respondents' narratives point to the existence of a hetero-normative ideology in society and lack of understanding and acceptance of sexuality and gender diversity including same sex attraction and multiple expressions of gender. It results in various forms of marginalisation of transgender people (some of which will be examined in this report such as exclusion or even violence from the family or community; police violence; abuse and coercion in educational institutions; discrimination, ridicule and neglect in health care institutions; discrimination and prejudice in seeking employment; and lack of State recognition of the individual's gender identity or changed sex. ***There is a need to educate the public about sexuality and gender diversity and the value of every human life. There is also a need for anti-discrimination laws to protect transgender people from direct discrimination in various public and private institutions.***

Family

My family wants me to get married to a woman and have a kid so that I will have support in my old age and a companion. From the moment a boy is born to a family, the parents have dreams about their son growing up, bringing home a bride and giving them grandchildren. I tell them that I can provide every kind of happiness to them except a bride.

Pinky Gurung, Kathmandu

(Right to found a family, Principle 24, YP, 2007)

About a year ago, somewhere in eastern Nepal, a man got to know that his teenage son is a homosexual. He gave his son poison and killed him. The BDS branch office there filed a case with the police. The whole village collected money and gave it to the police to bury the case.

Kumar Vaidya, Lalitpur

(Right to life, Principle 4, accountability, Principle 29, YP, 2007)

Respondents in Thailand also shared that transgender children and youth face a lot of violence from their families. Some get expelled from the home, while others are sent to the military as their parents think this will make them “more male.” Neighbours also make it difficult for a family with a transgender son; they gossip and tease. There was a case of a man who was drinking with his friends when they made fun of his transgender son. Enraged by his humiliation, he went home and beat his son and threw him in a well, where he drowned. Thus, a young man was deprived of his **right to life (Principle 4, YP, 2007)**. Ron, a researcher from Bangkok, found that “80% of transwomen face sexual violence from family members. They are seen as sexual objects whereas for most this is their first sexual experience and it is abusive” **(Right to security of the person, Principle 5, YP, 2007)**. This demonstrates transgender people’s greater vulnerability to abuse during childhood and youth.

At a public hearing^{vi} in Tamil Nadu about human rights violations faced by the transgender community, the accounts shared demonstrated that when changes in gender expression of a child become obvious – and that happens usually with the onset of puberty – parents resort to policing the child’s sexuality and adopt cruel measures to ensure gender conformity. There was a case shared of a young boy whose parents administered electric shock to his genitals in an attempt to “fix” his fondness for girls’ clothes **(Right to freedom from torture, Principle 10, YP, 2007)**. They hoped it would “rouse” the man in him. In another case, a young transwoman’s parents forced her to take male hormone tablets **(Protection from medical abuses, Principle 18, YP, 2007)**. Even “honour killings” of transgender persons are not uncommon but go unreported. Rose, of the popular chat show on Tamil television, *Ippadikku Rose* (Yours, Rose), shares in a

2008 interview to Gloria Elayadathusseril for thestar.com that her mother still beats her, at the age of 29, and despite her being a celebrity.

It is clear that families in the countries studied are not accepting of gender diversity and sexual freedom, and punish digressions. The ICPD PoA gives great importance to the family as noted in Principle 9 and Chapter 5. In order to support families and contribute to their stability (5.2, ICPD PoA), *interventions are needed that educate families about sexuality and gender diversity, enable them to accept plurality within and play a supportive and empowering role.*

Police

One meti was raped by four police officers three months ago near the teaching hospital in Kathmandu. She came to BDS and spoke to the lawyer. She had noted the registration number of the police van, but no medical examination had been conducted after the crime and therefore there was no evidence in order to go to court. However, the senior police officials were supportive of her case and helped get compensation worth 150,000 rupees for the victim. Additionally, the guilty were punished by having them transferred to remote areas and withholding their pay for a year.

Sharmila Dhakal, Kathmandu

A meti sex worker performed oral sex on a policeman client, and thereafter he slit her throat with a knife. When he struck again, she put her hand forward and it got slashed. The policeman escaped. BDS collected money for her operation at a hospital in Delhi, India. Later, her family married her off to a woman.

Sunil Babu Pant, Kathmandu

(Right to security of the person, Principle 5, YP, 2007)

Raju Barah, an activist from Narayangarh shared: “Transgender people face a lot of human rights violations. People on the streets abuse them and demean them. Our staff persons have been sexually harassed and physically assaulted on the streets. The police once picked up a staff person’s transgender friend with threaded eyebrows and locked her up with no charge. He said she was a ‘bad influence and needed to be removed (from society)’ (**Right to non-discrimination, Principle 2, right to security of the person, Principle 5, right to freedom of expression, Principle 19, YP, 2007**). Human Conscious Society in Narayangarh (HCS) invites police personnel and local administration officials for workshops and public programs; they attend but their mindsets do not change. They are sceptical – they say that we do this for fun or for the HIV prevention funds. There are gay police men and women here who are in contact with HCS. The other police personnel say that we have been a bad influence on them. In 2004, a butch lesbian policewoman came to notice; she was sacked” (**Right to non-discrimination, Principle 2, right to work, Principle 12, YP, 2007**).

In India, *kinnars* and *aravanis* are routinely subjected to arbitrary detention and sexual harassment and abuse by police personnel. It is absolutely imperative that law enforcement personnel (including the police and the judiciary) do not discriminate against any population group, as this is a failure to meet their responsibilities and amounts to abuse of institutional power. *This indicates the need for specific efforts towards educating and sensitising police and the judiciary on human rights, gender and sexuality. There is also a need to formulate guidelines on police conduct towards transgender people.*

Within Sexual Minority Movements

In society, transgender people are viewed as a sexual minority, but within LGBTI movements, they are often considered to be of a lower status. This is reflective of the unofficial hierarchy within LGBTI movements, where gay men assume most power, followed by lesbians, bisexuals, transgender and intersex people. Difference in socio-economic class intensifies this hierarchy. Raju shared: “The discrimination towards

transgender people is so strong and permeates the LGBTI community. Gay men do not want to receive HIV prevention education from our transgender outreach workers in public and don't want to go to an organisation working with transgender people to access services." Being HIV+ compounds the discrimination further. Divya Gurung from Kathmandu shared: "Within the transgender and broader LGBTI community, there is discrimination on the basis of HIV+ status. We already lack social support; HIV+ transgender people lack support from within the community as well."

The LGBTI movement is a grouping of several movements with distinct identities that come together in different spaces to express their shared needs and advocate for shared demands. But such an arrangement tends to obscure the experiences and needs of some of them (very often transgender and intersex people). Hua, an activist from Bangkok shared: "There is not much knowledge even in the LGBT movement about intersex people and their needs. Recently, there was a screening of a film from Chile on intersex issues in which two intersex Thai persons spoke about their experiences. There is no specific organisation or even programs for intersex people. I imagine that among the LGBTI community, intersex people must be the most vulnerable." ***There is a need for LGBTI movements to further democratise their politics and internal working, and be inclusive in their demands.***

Within Transgender Communities

Hua shared that within the transgender community also there is discrimination based on social class, occupation and femininity; for instance, she says, sex workers are discriminated against. Within India's *kinnar* community, those who do sex work occupy the bottom rung of the hierarchical society. The transgender community is also not immune to social values around commercial sex. Among *kinnars*, those who are not castrated are discriminated against. Transgender people identify themselves in different ways – as women, as transgender, as third gender, as *kathoeys* (in Thailand), *kinnars* (in India), or *mak nyahs* (in Malaysia). Even among those who identify themselves as women, not all want to undergo the sex reassignment operation. A large proportion are

attracted to men, some to women and other genders. In sexual activity, some enjoy being active (penetrating), contrary to popular belief that transwomen are always passive (penetrated). This is important to know for HIV prevention work. Hua suggests that *there is a need to do more workshops with transgender people (particularly leaders, peer educators, health workers) and other activists of sexual minority movements on gender and sexuality so that they can understand these issues, and work with their peers with no judgement and no self-discrimination.*

Differential Treatment: Transmen

There is very little information on transmen in Thailand. Research does not focus on them; there is very little discourse or discussion about them. I guess this is because more importance is attached to masculinity and the preservation of it. There isn't much information on what kind of violence they might face.

Ron, Bangkok

Respondents shared that there is a difference in the treatment of transwomen and transmen. Suman Tamang from Kathmandu shared that while people curse transwomen and police beat them and pick them up off the streets, transmen in Nepal do not face the same kind of social ridicule or police harassment. This shows that the issue is not just about prejudice against transgender people; it is about rigid social and cultural notions of masculinity and femininity and the preservation of these within a patriarchal framework that idolises masculinity and severely punishes any departures from it. It also points towards the differences in how transmen transition compared to transwomen, and towards how mobile, visible, organised and vocal transwomen are compared to transmen, reminiscent of patriarchal power relations, resulting in an almost total silence around transmen in the region. *There is a need to develop further discourse on masculinities and femininities, which promotes respect for plurality.*

Change in Mindsets: The Thai Red Cross Experience

Donating blood is seen in Thailand as an act that earns the person religious merit. So, in March 2008, when the Thai Red Cross (TRC) made changes to the screening process effectively barring LGBTI people from donating blood, LGBTI rights groups protested vehemently (**Rights to equality and non-discrimination, Principle 2, YP, 2007**). As a result, a couple of weeks later, the TRC announced that it would remove discrimination by changing the screening process, and would focus more on screening for behaviour considered high-risk for HIV infection. Yet, respondents shared that the implementation depended on the person reviewing the screening forms. Similarly, in other spheres and institutions such as law enforcement and healthcare, where law and policy may not be discriminatory or oppressive, the enforcement of these with respect to transgender people is prejudiced. *This shows that along with policy, people's mindsets need to be changed.*

(B) IDENTITY DOCUMENTS/TITLES

(Right to recognition before the law, Principle 3, right to social security, principle 13, right to freedom of expression, principle 19, YP, 2007)

Respondents in Nepal shared that transwomen face a lot of difficulties when they produce their citizenship card for social services, in terms of not being recognised. The card has their male name and earlier appearance, which does not resemble their current appearance conforming to their gender expression or assumed gender identity. They are then discriminated against, ill-treated and denied access to health and other services. Ron and Guide, researchers from Bangkok shared: “Transgendered people face difficulties even while travelling; at immigration there is confusion because their passport/ID says they are male but their current appearance is that of a woman; it does not match. It is their right; if they feel that they are women, they should be recognised as such.”

When Bon from Bangkok lost her ATM card and called to cancel it, the bank representative did not act on her request because the bank's records showed the customer to be a man while her voice sounded like that of a woman, and the bank had no record of

her being transgender. As a result, a large amount of money was stolen from her account. When she went with her mother to the police station to record her complaint, the officers did not advise her on what kind of complaint to make, and additionally surmised that one of her family members or a one-night-stand might have used her card to withdraw money. They regarded her and her mother as the criminals rather than the victims. This points to the fact that being transgender sums up their identity for other people, and that this identity is strongly associated with criminality.

In Thailand, a network of transwomen tried to advocate for a change in the law to record their title as Ms. or Mrs. in order to be equal to women^{vii}. This bill was not passed by Parliament, the argument being that “if transwomen have titles like women, in criminal cases, how will they be tried? This will make the police investigation process more complicated.” Male members of Parliament wondered how they would know if their wife could have a baby or not, and if the woman they would marry were a biological woman or not? They said: “Men are likely to be cheated.” Ron and Guide shared that at a recent consultation on reproductive health issues hosted by members of the teaching profession, activists from the transgender movement were invited, and a debate erupted with some expressing the view that it was legitimate for post-operation transsexuals but not others to assume the title of a woman. They lamented: “Who has the power to decide their (transgender people’s) control over their biology and bodies – doctors and economics!” However, laws in Thailand still prohibit post-operative transsexuals from changing their gender on their passports and identity cards.

There is a need for policy that allows for updating citizenship, identity cards and other official records according to a person’s current gender identity, including appearance and the category of transgender or third gender where applicable. Such policy needs to be rooted in an environment of respect for transgender people so that they may access social spaces and services without prejudice, and have access to government schemes and policies available to people of their assumed gender. ***Ideally, gendered titles such as Mr., Ms., Mrs. and Miss should be discarded. These are attempts to distinguish the sex of a person and will only serve to alienate and marginalise many.***

(C) EDUCATION

At school, teachers used to scold me: “Why are you so girlish? The way you walk, the way you talk, acting shy, your appearance and long hair.” This went on till I started 10th class. Teachers asked me to change my ways or leave the school. I couldn’t change since I felt so different from the way the other boys were. So I left school rather than face their scolding and pressure.

Bhoomika Sreshtha, Kathmandu

Even a routine activity such as using the toilet can be a stressful one for a transgender student. They might be watched, laughed at or groped in the boys’ toilet; they might evoke discomfort from female students if they use the girls’ toilet. For this reason, Kampang Secondary School in north-east Thailand has created separate toilets for the social convenience of transgender students (please refer to Figure 1). A technical college with 1,500 students in the northern province of Chiang Mai set up a “Pink Lotus Bathroom” for its 15 transgender students in 2003. A transgender activist analyses this as a helpful step at the school and university level. At later ages, if transwomen undergo sex reassignment, they will choose to use the women’s toilet since they want to be accepted as women. These toilets symbolise segregation to many as they were not built out of respect for diversity or rights, or for that matter with proper consultation.



Most schools are spaces for disciplining and moulding students with regards to, among other things, sex and gender. In such a scenario, any expression of sex and gender falling outside of the hetero-normative male-female binary are discouraged (Correa and Careaga, 2004). As a result, adolescents realising and expressing their gender variance while in school often face direct or indirect coercion and drop out of school (**Right to education, Principle 16, right to freedom of expression, Principle 19, YP, 2007**). This stunts their

social development, knowledge and skills acquisition, and leaves them ill-equipped to engage with mainstream society and economy. *There is a need for a comprehensive sexuality education curriculum to be developed and taught in schools after training teachers; a curriculum that includes information on sexuality, gender diversity and gender equality. Overall, education curricula need to be revised so that they do not conform to gender binaries and a hetero-normative framework in order to make them inclusive and less gendered. Policies of educational institutions need to be more inclusive, such as allocation of separate toilets and hostels for transgender students and adding the category transgender or third gender to admission forms.*

(D) HEALTH

(PRINCIPLE 17, YP, 2007)

In a medical emergency, when a transwoman is taken to a hospital, the hospital staff will look at her face and body; they get confused and make fun of her rather than treating her.

Bhoomika Sreshtha, Kathmandu

Transgender people have lower self-esteem. They have internalised the homophobia, stigma and discrimination from society. When they get an infection or fall sick, they do not access treatment quickly because they fear that they will not be treated properly. They often access health services very late, often when their problem has intensified manifold. In the case of HIV+ transgenders, many of them are in denial and refuse to accept their status. They are not accepted by society and so have very low self-worth.

Badri Pandey, Counsellor at Voluntary Counselling and Testing Centre, Lalitpur

Respondents shared that medical staff do not recognise their identity or rights; they only treat them for their body and title as per their ID cards. In hospitals, transgender people

are confused about what line to stand in – the line for women or for men – and about how to report their sex in the form. There is also confusion regarding what ward transwomen should go to. Since their title is that of a man, they are required to go to the male ward but they do not feel comfortable there. Respondents in Thailand shared that the big cities have government-run STI clinics for men who have sex with men (MSM). If a transwomen is raped and has an anal tear, the clinic cannot treat her as they only treat STIs. So they reject the case and refer her to the one-stop crisis centre set up to deal with violence against women, but she does not belong there either. When getting an x-ray, female patients are provided gowns while males are not. Bon shared that in the case of transgender people, the medical staff may not understand that they need a gown. She suggested that the staff be flexible and just ask transgender patients how they want to be treated.

Respondents shared that transgender patients are mocked and ridiculed by hospital staff and often kept waiting longer than other patients. There have been instances where both male and female doctors refused to examine them. Those seeking treatment for an STI in hospitals have been advised to stop or change their sexual behaviour rather than having their illness treated. As a result, they do not like to go to hospitals even for general health issues; they go to the chemist shop instead. HIV+ status compounds the prejudice for transgender people and MSM; it is difficult for them to get admission in hospitals. Raju shared: “Our organisation is treating patients infected with HIV and often faces difficulty in getting regular supply of ART drugs from the government hospital, while other organisations receive them on time. This is clearly because of discrimination towards our clients.” In consonance with the ICPD PoA, *governments need to take action to ensure that HIV infected persons and AIDS patients have access to appropriate treatment and adequate medical care (paragraphs 8.29 and 8.33). This involves recognising sexuality as a crucial link in the HIV epidemic.*

Doctors do not know enough about anal STIs or oral STIs, mostly only about vaginal STIs. They also do not know how to treat transgender people who are taking hormones. Respondents in Nepal shared that there are not enough doctors qualified to work on reproductive and sexual health issues. If they do have knowledge, they are not sensitised

to treat the cases properly. Jyoti, medical supervisor of a hospice in Kathmandu shared: “In tuberculosis treatment centres, staff do not understand how to deal with transgender people and are hesitant to examine them. Once, a pregnant nurse refused to touch a HIV+ patient for fear of infection. There is lack of knowledge about HIV among health personnel and even less about sexuality. There are laws for people living with HIV, including directives that they be referred to as *sankramit* (infected) and not *rogi* (diseased). These laws contain clauses about confidentiality and rights to a proper death certificate, documents and rituals. There remains a large gap in the implementation of these laws.”

Manisha and Pinky Gurung, activists from Kathmandu shared that condoms and lubricants are difficult to find and are not affordable: “Transwomen and gay men rely on what we supply, and we rely on the UNDP supply which is not regular. A stoppage of even 15 days means that unsafe sexual behaviour is possible. In reproductive and sexual health programs and HIV prevention programs conducted by the government as well as NGOs, transgender people are often grouped under the category of MSM. We do not like that. We do not consider ourselves homosexual. We are not attracted to other transgender people. We are attracted to the opposite sex (men) and consider ourselves heterosexual.” Usasinee Rewthong from Bangkok shared: “The State’s HIV and AIDS public education campaigns do not contain messaging for MSM or transgender people. Most condom promotion work is targeted at young people but portrays heterosexual males and females. This needs to be broadened so that many others can relate to it, understand their vulnerability and protect themselves.” ***Governments and funding agencies need to incorporate issues of gender and sexuality in policies and programming, take affirmative action, and provide more funding specifically for programs aimed at transgender people.***

As stated earlier, transgender people internalise societal gender norms, operating within a hetero-normative framework that prescribes “masculine” and “feminine” body types and punishing anything in between. These do not recognise sexuality and gender expression as a continuum of experiences. Therefore, many transgender people want to alter their bodies to match their gender identity. Respondents in Thailand shared that many want to

be fair-skinned because women should be. They, particularly teenagers, take drugs that are available over the counter for treatment of certain illnesses, the side effects of which make the skin fair. Respondents at all sites explained that transwomen often take oral contraceptive pills (OCPs) without a doctor's advice. When word spreads in the community that taking OCPs increases breast size, everyone takes it without knowing what side effects it can have on their health. Ron shared examples from Thailand: one person took 20 pills in one day hoping to speed up the transition process; most think that one-pill-a-day is for women's contraception and does not apply to them; many take two pills a day. There is a Chinese contraceptive drug that women are supposed to take once a month; some transwomen take it once a day. Hua shared that even doctors know very little about hormone use for transgender people. They may tell them: "You are a man; do not take female hormones, you might get cancer." But transgender people do not want to be told that; they want to know about the appropriate hormones, dosage and side effects.

Sex reassignment surgery (SRS)^{viii} is not available in Nepal but is available in India and Thailand, although the legal position of SRS is ambiguous in India^{ix}. In Thailand, SRS has been practised for several years. The country, in particular Bangkok, has become famous globally for sex reassignment operations with people from all over Asia and developed countries visiting Thailand for the operations. It is available in the public health sector in Thailand and in some parts of India: Tamil Nadu is the only state where the government is reimbursing the cost of sex-change operations. In Thailand, government hospitals, while more affordable, undertake a long procedure that includes psychological testing and year-long counselling. The government is concerned that people are taking the operations too lightly because they are widely available, and that people undergoing the operation and regretting it later will have no recourse since it is irreversible. In both countries, SRS is available in private clinics and hospitals, but this is unaffordable to most transgender people. Therefore, they access crude methods of castration by quacks which carry risks such as urinary stricture, septic infection and even death. In 2008, in Thailand, there was the case of a young boy getting himself castrated in Chiang Mai and the procedure got botched. Newspapers highlighted this case and there was a lot of public unrest around it, leading to the Thai health minister, Chaiya Sasomsab issuing a directive imposing a temporary ban on castration operations. Since sex

reassignment operations require the testicles to be removed (castration), such bans are dangerous as those wanting to get the operation will visit underground, unlicensed clinics.

According to Vidya Venkat, writer and activist from Chennai: “Unfortunately, transsexuality is more a subject of cheap jokes than of any serious medical inquiry in India.” The Indian Medical Council has not formulated any guidelines for SRS and this causes incomplete responses such as the lack of counselling services (PUCL-K, 2003, p. 55). The Medical Council of Thailand is discussing how to regulate the operations and determine eligibility criteria for getting one, including age and counselling. Activists shared that this is not a rights-based approach. In the current environment, client or parental consent is not paramount – the doctor’s approval is! In Thailand, the panel responsible for formulating regulations, comprising only men, will invite transgender people to a consultation to get their perspective on this matter. *These accounts point to the need for governments and Medical Councils to formulate guidelines in consultation with the transgender community, and for governments and transgender movements to deliberate on the provision of government sponsored SRS as an essential public health service.*

There is concern for transgender people suffering from mental health problems. However, these problems are not usually related to the gender identity itself but to problems that arise from dealing with a gender identity that does not match an assigned gender role and related social conflicts. Legal and medical standards^x place hurdles on the path of achieving one’s desired body and gender identity. One has to be diagnosed with gender identity disorder (as per the Diagnostic and Statistical Manual of mental disorders) to obtain sex reassignment therapy. For that, one has to admit to feelings of discontent and distress with one’s self, which may not be present. This medicalisation destigmatises transsexuality as it ceases to be viewed as a deviant choice or sin. However, it creates a different kind of stigma – that of a problem, a disorder or a disease. Hua raises some pertinent issues when she asks: “Give information so one can make a decision; it’s their choice, but why certify it as gender disorder or a mental disorder? Why is a doctor

required to certify that they can get this done? Why is the doctor given so much importance and power?”

It is clear from these findings that there needs to be greater research on transgender people’s health needs, including hormone therapy and SRS, in conjunction with the transgender community; inclusion of the same in medical curricula and dissemination among the community – developing and training peer educators would be particularly effective; legalisation of sex reassignment operations and state provision of the same for the needy; legal recognition of change of sex; training for health care personnel on sexuality and gender equality, and sensitisation to the situation and needs of transgender people. Institutional changes need to be made, such as adding the category of third gender or transgender on hospital forms, separate queues, toilets and wards, and provision of gowns. Greater attention needs to be paid to the mental health needs of transgender persons and counselling services must be strengthened to serve them.

(E) EMPLOYMENT

(Right to work, Principle 12, YP, 2007)

I have completed 10th class and used to teach at a government school in Myagdi district. I used to teach health, games, economics and accounts – I was an “all rounder.” My appearance was somewhat masculine, and I dressed in jeans, trousers and shirts. The female teachers in school used to get attracted to me. Parents were unhappy about my appearance. I was told by other teachers to start dressing and behaving “like a woman” or leave the employment of the school. I could not take the pressure for long and left the employment of the school.

Badri, transman working at BDS, November 2008

(Right to freedom of expression, Principle 19, YP, 2007)

Activists in Thailand shared that it is difficult for transgender people to get employment or even to study in some fields like medicine. Some medical schools will not accept transgender people, especially military medical schools (**Right to equality and non-discrimination, Principle 2, YP, 2007**). In most institutions, they are confined to certain faculties such as tourism or mass communication. Widespread prejudice and discrimination in society obstructs even educated and skilled transgender people from getting jobs they are suitable for. Only a change of mindset in society, coupled with anti-discrimination laws, will ensure employment for transgender people.

Revathi's (2005) account is telling:

My strongest desire was to live the life of a woman, to marry the man I liked, to find a job I could do. In trying to become a woman, I had ended up living the life of a hijra among other hijras. I needed money to live with respect in society, to wear nice clothes, and to meet my daily needs. Having no real option, I was forced to take up sex-work to make enough money for my needs. I had to deal with policemen and their torture. This society does not look on me favourably. The legal system refuses to provide either facilities or assistance. My family treats me well only if I give them money. I grew sick of life thinking of all this and wanted to do something to end my life.

Raju shared: "At Human Conscious Society, we try to dissuade the transgender and gay community from doing sex work since society forms a bad image of them. So, we employ them in the organisation, or in organisations in other districts. But how many people can we employ like this? The government needs to provide jobs." ***There is a need to provide skills training and jobs or capital for entrepreneurship to transgender people.***

As in many parts of the world, working in the military is especially difficult for LGBTI people in Asia. Sharmila Dhakal, a lawyer at Blue Diamond Society shared a case: "In 2007, before the Supreme Court judgement, two military personnel were discovered to be lesbians. They were punished with about a month's confinement in dark cells and then removed from service. A case was lodged, and the military court declared that they had different regulations from the law of the land (**Right to freedom from arbitrary deprivation of liberty, Principle 7, accountability, Principle 29, YP, 2007**). In

Thailand, military rules stipulate that transgender people are those who are born with male bodies but want to be women and that they have a mental illness. Activists shared that in the drafting process of joining the military, transgender people are certified as suffering from a permanent or severe mental disorder; this is entered in their records. After leaving the army, if the person seeks a job elsewhere, they are most often rejected because of this certification. An individual made a complaint to the Human Rights Commission of Thailand and filed a suit in the administrative court, the result of which is still pending. The old rules being followed need to be revised, and anti-discrimination provisions put in place.

(F) HOUSING

(Principle 15, YP, 2007)

Most transgender people face coercion and/or violence from their family and/or community. Some choose to leave, while others are thrown out of homes, villages or communities. With little or no financial support from the family and skills to get jobs, transgender people live in poverty. ***There is a need to provide low cost or free housing to needy transgender people in order to provide the social support that they lack so that they may focus their resources on skills building and acquiring work.*** In a recent budget (announced on 19th September 2008), the Nepal government allotted 25,000,000 Nepali Rupees (less than USD40,000) to Blue Diamond Society, a non-profit organisation working to empower LGBTI people in Nepal, to buy land and construct low cost housing for 50 LGBTI people who have been thrown out of their houses and schools, are not employed, and do not have a place to live. Although the amount allocated is insufficient, it is a step in the right direction. Advocates in Kathmandu are in discussions with government representatives about increasing the amount in the budget for the following year.

(G) MARRIAGE

(Right to found a family, Principle 24, YP, 2007)

While the ICPD PoA recognises that there are different kinds of families (5.1, ICPD PoA) – language that many States held reservations against – it did not venture into aspects of sexual rights such as the right to choose one’s partner or decide one’s gender expression and identity. Had the negotiated document guaranteed these as rights, the PoA would have been a valuable instrument for bringing about law, policy and social change to meet these needs. However, other international documents such as the 2006 WHO report, the International Bill of Gender Rights^{xi} (IBGR) and the Yogyakarta Principles (2007) can be used for advocacy as in the Nepal Supreme Court case, detailed in the next section of this report. The IBGR lists “The Right To Form Committed, Loving Relationships And Enter Into Marital Contracts.” Article 16 of the Universal Declaration of Human Rights notes that “men and women of full age ... have the right to marry and to found a family. They are entitled to equal rights as to marriage ...” While this uses the gender binary, it may be used cautiously where the situation is favourable, highlighting the right to marry and all human beings having equal rights (Principle 1, ICPD PoA).

Since none of the countries studied, barring Indonesia, recognises change of sex or allows same-sex marriage, transgender people do not have the legal right to marry since in most cases, technically they are of the same sex as their partner. They cannot adopt children for the same reason, and often cannot access assisted reproductive technologies (ART) or artificial insemination. In the event of a partner’s death and in the absence of a will, they cannot inherit their partner’s property or claim insurance or pension (**Right to social security and to other social protection measures, Principle 13, YP, 2007**). Respondents shared that where couples of opposite sex persons are able to acquire bank loans, couples of the same sex or with a transgender partner are not given loans as they are viewed as not having stable relationships (**Rights to equality and non-discrimination, Principle 2, YP, 2007**). All the above issues amount to discrimination against transgender and same sex loving people. Respondents of this study shared that *a change in marriage and related laws to make them gender neutral and more inclusive*

would address all of these issues including family planning, the right to which is guaranteed in the ICPD PoA (paragraph 7.2).

AFFIRMING RIGHTS: CASE STUDIES

This section of the report documents recent developments and advocacy efforts, and analyses political factors that led to rights affirming changes in laws and policies in Nepal, Thailand and Tamil Nadu in India.

(A) THE CASE OF NEPAL: SUPREME COURT LITIGATION

In 2004, a writ petition was filed in the Supreme Court (SC) of Nepal seeking to ban homosexual activities. The petition was quashed and following this in 2005, Blue Diamond Society along with three other NGOs filed a petition in the SC citing discrimination faced by LGBTI people and seeking to gain protection of their rights. In December 2007, the bench issued a summary decision recognising discrimination and violence faced by LGBTI people as well ordering the government to recognise their existence as natural persons, enact new laws and amend existing laws that discriminate against them so that all individuals with different sexual orientations and gender identities can exercise equal rights like any other citizen of Nepal. In November 2008, the SC gave its final judgement reinforcing its decision and also calling for decriminalisation of same-sex marriage by amending the law on unnatural coition, and inclusion of sexual orientation and gender identities as a basis for non-discrimination in the Constitution currently being drafted.

Strategies

The central arguments made in the case were the twin arguments of *personhood* and *naturalness*. Hari Phuyal, one of the lawyers representing BDS et al in the SC case, shared their key strategies for the case: “When BDS approached us, we took up the case

and asked Sunil Babu Pant (Founder of Blue Diamond Society) to make a presentation for us on sexuality, sexual orientation and gender identity so we could understand the issues in depth. It turned into a day-long workshop. We invited two lawyers from India who are involved in the Delhi High Court case^{xiii} to meet with us and help us strategise.”

“At the first hearing, the strategy used was to elaborate the different forms of discrimination and violence faced by LGBTI people, and to *cite case law and highlight international jurisprudence* – Toonen v. Australia, Lawrence v. Texas, Dudgeon v. United Kingdom and another case – to answer a basic question: “Can there be discrimination based on sexual orientation and gender identity?” We used the INTERIGHTS non-discrimination handbook^{xiii} which has a chapter on sexual orientation as a ground for non-discrimination. There is no international jurisprudence on gender identity as basis of discrimination but the Yogyakarta Principles mention gender identity as a basis.”

Reference was made to the *country’s Constitution* and *international treaties* – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) – to make the case for non-discrimination, equality, protection and promotion of human rights. When the bench noted that the ICCPR does not list sexual orientation and gender identity as grounds for non-discrimination, it was argued that the Covenant states “any other grounds” for the purpose of covering all grounds, and that every individual should be protected from discrimination of any kind. Hari elaborated: “The bench then noted that in Toonen v. Australia, the term ‘sex’ was interpreted as including sexual orientation, to which we responded that while this could be done, sexual orientation also emerges as a separate ground. We gave the *examples of other Southern countries* – South Africa and Fiji’s constitutions, which were more recent.”

“The bench raised a point that in the West, there was no official recognition of transgenderism, only of transsexualism. If an individual does not undergo sex-reassignment surgery, they are not recognised as transgender, but by their sex at birth (male or female). We argued that sex re-assignment surgery is not available in Nepal, or indeed, in South Asia. They would have to go to Thailand for the procedure and cannot

afford the cost. The bench then asked if there was any transgendered person in the courtroom. Manisha of BDS stood up and said that she was. She stated that she did not choose to be the way she is, but felt this way. She said that she wanted to change her sex, regardless of any health implications it might have, but currently could not afford it. The *presence of an affected party in the courtroom* and their statement had an impact on the bench and was useful to the case.”

“We pointed out to the bench that non-heterosexuality and transgenderism are not new in our society, and that *history and religion* have recorded their presence abundantly. We cited *internationally respected organisations*, including a World Health Organisation (WHO) report which explains that being LGBTI is normal and not a disease, and the American Psychological Association and American Psychiatric Association’s *amicus curiae* brief in *Lawrence v. Texas*^{xiv}, which argued that homosexuality is a normal form of human sexuality and not a mental disorder. The brief also states that anti-sodomy statutes reinforce prejudice, discrimination and violence against gay men and lesbians.”

“The bench asked how LGBTI people’s behaviour affects society, and how *public morality* will not be disturbed if they are granted rights. We argued that their behaviour is perfectly natural; society has been trained to view their behaviour as odd, and to expect certain behaviour from those born male and certain other behaviour from those born female. So when we see a male, we expect them to behave according to expectations of male behaviour, whereas the person feels like a female and so behaves like a female (in the case of a transgendered person). The problem is not with their behaviour but with our lack of understanding of them. To address the bench’s second question, we argued that with greater liberty comes greater discipline. When LGBTI people can acquire housing more easily, they will have greater privacy and will not cruise in public places; if marriage is allowed, many LGBTI people will not run away from home; and so on.”

“When the government stated that there is no specific provision in law that discriminates against LGBTI people, we argued that there was a need to form new grounds for non-discrimination in Nepal’s constitution. The bench recognised that sexual orientation and gender identity were grounds for discrimination and stated that no persons should face discrimination on these grounds, including in public places and public services such as

schools, hospitals, etc.” *It is not enough to prevent violations; we need to demand from our governments to respect, protect, promote and fulfil rights.*

It is important to note that this development came about at a stage in Nepal’s political history where a major political upheaval was happening – the move from monarchy to democracy and political parties (particularly the Maoists) were wooing various constituencies including sexual minority groups. The last is evident from the fact that three major political parties included LGBTI rights in their election manifestoes and that the Communist Party of Nepal-United invited one person from the LGBTI community^{xv} to stand for the 2008 Constituent Assembly (CA) election. This development may be analysed as part of the nation’s attempt to gain international acceptance and support in its new status. This may be one of the reasons, along with CA member Sunil Babu Pant’s efforts to educate and sensitise other CA members on LGBTI rights, for Nepal signing on to the statement made at the UN General Assembly session in December 2008 in favour of LGBTI rights and against discrimination and other forms of violence.

After the SC Judgement

Since the summary judgement in 2007, the situation of transgender people has been improving. Sharmila shared that the police does not harass them as much on the streets. If they are picked up for sex work, they do not get raped in custody as frequently happened before. Suman shared that visibility of LGBTI issues has increased after the Supreme Court judgement. The number of public programs has increased as have media advocacy and coverage of LGBTI issues. Respondents shared that LGBTI people are more confident about coming out to their families.

Badri Pandey, a VCT Counsellor in Lalitpur, shared that the SC order and the hope of getting new citizenship cards has increased the confidence of transgender people. Now that they have been recognised by the Court and the government, they feel worthy. They believe their voice will be heard and that they can achieve their rights. **They feel empowered.** The SC order has given them strength to work further for their rights. Other

respondents shared instances where they were teased or abused on the street and they told the miscreant that the SC has supported them and that abuse will not be tolerated.

Pushpa from Lalitpur expressed the need for the government to implement the SC order in a timely manner. She said: “We also want to live our lives with dignity, be recognised by our names and our expressed gender, have our identity and be respected in society. The government has to ensure this.” As Sunil Babu Pant says: “Nepal has taken a lead in championing inclusion, human rights and freedom in Asia.” It’s time for other States to follow suit!

(B) THE CASE OF THAILAND: CONSTITUTIONAL AND LAW REFORM

The case of Thailand is different from Nepal in terms of the degree of social tolerance of *kathoeys* being far greater than that of *metis*. Examples of this include the 2003 Thai feature film *Beautiful Boxer* which tells the life story of a *kathoe*y Muaythai (a form of martial art) fighter, model and actress; and the Pink Lotus Bathrooms in colleges and schools to provide transgender students with safe facilities. With Thailand having no anti-sodomy law for civil society to challenge, the focus lay on furthering the social tolerance into legal and political recognition of sexual and gender diversity.

2007 Constitution

A new constitution was drafted from September 2006 through August 2007 following the military coup in Thailand. Article 30 of this constitution, pertaining to equality and non-discrimination, guarantees all people equal rights and protection under the law regardless of their sex. As Paisarn Likhitpreechakul shared and elaborated in his 2008 article for the International Gay and Lesbian Human Rights Commission, in 2007 a coalition of LGBTI organisations, citing the Yogyakarta Principles and other documents, lobbied the Constitution Drafting Committee to list sexual orientation and gender identity as grounds for protection from discrimination in the Article. While this was not achieved, an incident where a famous *kathoe*y was denied entry to a nightclub (which made newspaper

headlines) spurred debate on the issue and resulted in an explanation attached to the Article stating that the Article pertains to men, women and people of other gender identities. Naiyana Supapung from the Human Rights Commission of Thailand shared that if LGBTI people face a violation of their rights based on their sexuality or gender identity, they can now file a case in the Constitutional Court of Thailand.

Activists shared that the *strategy* employed was to gain the trust of policy-makers (in this case, individuals on the Constitution Drafting Committee), secure their investment in the cause and work with them to advocate for the issue within the policy-making space. One of the Members of Parliament is a lecturer; he presented the argument in the Legislative Assembly and is now regarded as an expert on LGBTI issues. This worked in his benefit and may also inspire others not to be scared to defend LGBTI rights in Parliament. In his argument, he used theory, concepts and examples of individuals' life experiences. Naiyana opined: "In Thailand, leaders are viewed as being flawless. So if more leaders help LGBTI cases and further discussion on LGBTI issues, this will lead to greater societal acceptance for LGBTI people, and the leaders will also gain their votes."

With the measured success of Article 30, the Human Rights Commission of Thailand can now strategise on how to use the Article in the Constitutional Court to set a precedent for LGBTI rights. Naiyana shared that the Commission has many cases that could be submitted to the Court; a strong and clear case, with a willing complainant, would have to be identified. The existing cases address varied issues such as regulations of insurance companies and banks (for loans), marriage registration and inheritance laws. Changes to the marriage registration laws require tact and strategy as it is a sensitive subject. The composition of the Court has to be considered; currently they are quite conservative. It is worthwhile to note that since the Commission has started working on LGBTI rights issues in partnership with LGBTI organisations, the staff members' understanding on the issues has increased, cases pertaining to LGBTI issues are handled more sensitively and appropriately, and LGBTI employees experience a more conducive working environment.

Rape Law

Along with the explanation attached to Article 30, another success was achieved in 2007 by LGBTI and women's rights groups. Previously, the rape law used to cover only women who were not wives of the perpetrator; wives, men and transgender people were not covered. Sustained advocacy by LGBTI and women's rights groups during the drafting of the new constitution in 2006-2007 bore fruit and succeeded in changing these laws to include marital rape and the rape of men and transgender people. The *strategy* used to bring this about was similar to that for Article 30. Activists approached allies in the Law Reform Division of the Council of State, and in the Constitution Drafting Assembly (CDA) – one of the members was the owner of a cabaret where a lot of transgender people worked and she understood their issues, difficulties and needs – to further this issue. The other strategy was to work with the Human Rights Commission which works with the CDA.

Contrary to Nepal's Supreme Court litigation, in Thailand the movement's approach has been to work with insiders in law-making processes to further rights issues. Part of the reason for this is that there is no sodomy law or law explicitly against homosexuality to challenge. Hence, in trying to bring about affirmative law and policy, the movement identifies and works with allies within law and policy-making processes. Another factor in the successes has been that the movement capitalised on the political environment and happenings in the country; the constitutional and law reforms brought about by the coup were identified as opportunities to include LGBTI rights. The government in 2006-2007, constituted by the army, initiated many laws on LGBTI rights, human rights and civil rights issues, one of them being a law to punish individuals and institutions for discriminating on the basis of gender identity or sexual orientation. However, these were scrapped by the coalition government that came to power in January 2008 following elections. In this manner, the development of laws and policies affirming health and rights has been significantly affected by the political agenda of those in government.

(C) THE CASE OF TAMIL NADU, INDIA: AFFIRMATIVE ACTION

In 2005, India's Central government introduced a category 'E' in passport application forms where 'E' stands for "eunuch." Transgender people would like this to be changed. The term "eunuch" bears a lot of historical stigma and transgender people do not want to be addressed thus. Additionally, other countries do not recognise the eunuch identity and this causes difficulties during international travel. This was a typical case of a government making a policy without consulting the population that it affects. In the Southern state of Tamil Nadu, the state government has been more understanding of transgender people's issues and needs, and consultative in formulating several policies that facilitate their development. The state has accorded official recognition for the transgender community with the issue of ration cards with a separate "third gender" category. This is, without a doubt, a major step forward in the demand for citizenship rights, as only two sexes – male and female – are recognised in Indian civil law. Furthermore, government orders have been issued to educational institutions to provide transgender people access to education and counselling services. More recently, the state's social welfare department announced the constitution of a separate welfare board for transgender people and a census exercise was undertaken to enumerate transgender people in the state.

Strategy

The *aravani* community in Tamil Nadu identified and then worked with Kanimozhi, a Member of Parliament who understood their issues and needs, and was committed to promoting their rights. She then worked from within the state government to build political will towards welfare and development of *aravanis* and enforce policies and schemes for them. One of the results was the public hearing in December 2007, organised by the State Commission for Women, the Tamil Nadu AIDS Solidarity Action (TASA) and ActionAid. The hearing had members of the transgender community speaking of human rights violations and other atrocities they had faced. The jury's recommendations formed a key input for the state government's decisions to set up the Transgender

Welfare Board, issue ration cards to transgender people, as well as bringing about other policy reforms.

Progress Thus Far

Transgender Welfare Board

The Tamil Nadu government constituted a Transgender Welfare Board in April 2008 with the social welfare minister as president of the Board. Appointed to the board are the secretaries of law and finance, and senior officials heading various agencies like the women's commission, police, and state human rights and social justice commissions. In addition, a number of transgender people have been included as advisors to the Board. This effort is the first of its kind in India and perhaps even in the world. With a budget of 50,000,000 Indian Rupees (around USD100,000) for the first year (2008-09), the mandate of the board is to look into "various problems faced by the community and to formulate and execute welfare schemes for the betterment" of the community. This includes extending grants to self-help groups of transgender people to set up businesses. Some businesses have been set up already under this scheme including fruit or vegetable shops. In a recent call by a state government undertaking tenders for a family card (ration card) administration project, the call stated if tenders were received from *aravani* self-help groups, priority would be given to them, qualification criteria would be waived, and other tenders would not be opened (Ramya Kannan, 2008).

Census

Districts are undertaking census of transgender people across the state to identify them and register them with the Welfare Board. The effort intends to ensure good living conditions for transgender people and improve their socio-economic conditions. The Board is empowered to look into the various problems, difficulties and inconveniences faced by the transgender people and based on these inputs, formulate and execute welfare schemes for their betterment. An NGO is helping to create a database of transgender

people with comprehensive information to assess their numbers, needs and demands so that the Board can identify ways to resolve them. ***Government and NGO partnership has been a key factor in the progress of transgender rights in Tamil Nadu.***

Ration Cards

The government has also started issuing food ration cards or family cards which serve as identity cards in many situations for transgender people with the special category of “third gender.” This is particularly significant as a step in the direction of citizenship rights for transgender people and State recognition of their gender expression and identity.

Education

Acting on the recommendations of a sub-committee for the rehabilitation of transgender people, the state government issued orders in December 2006 directing the school and higher education departments to ensure that transgender people are not denied admission to schools and colleges. The government order strongly favours counselling as a means to deter families from disowning a transgender child. It also recommends counselling for children with behaviour changes in schools, for which teachers need to be specially trained. The government order is clear that no discrimination should be shown against transgender persons on account of their gender identity or expression. In an additional effort to improve the education of transgender people, the Tamil Nadu government issued an order on May 2008 to create a third gender category for admissions to government colleges and stated that they can share 30% of seats reserved for women in government-owned and government-aided arts and science colleges. While this is a welcome step in ensuring access to education for transgender people, it takes away from provisions for an already marginalised population – women. It would be more appropriate to make separate reservations for transgender people.

I was the first transgender to be admitted at the university level under the third gender category (as per the government order of May 2008). I am pursuing a Masters degree in Journalism in the University of Madras. Apart from giving the order on education, the government needs to pay attention to the financial and other needs of transgender students as well in order to support their access to education. My family has shunned me; I do not live with them or have financial support from them. I work in a full-time job so I can pay my rent, daily expenses and tuition. I save practically nothing from my salary. I am unable to collect enough money to pay the hostel deposit which carries a lower monthly cost. Now, I go to work in the evening and return early the next morning and then I go directly to classes. I spend about four and a half hours a day travelling between home and work and between home and the university. I sleep barely four hours a day during the week. In my case, I have received a lot of emotional and some financial support from within the community, but there needs to be a systemic solution to these problems for all transgender youth.

Glady, Chennai

Sex Reassignment Operations

As mentioned earlier in this report, the Tamil Nadu government is fully reimbursing the cost of sex-change operations in government healthcare institutions, and a few people have utilised this provision already. Yet there are problems with this program. To begin with, this process requires the person to be able to raise the amount for this costly operation, pay for it, process the reimbursement and wait to recover the money; this is practically impossible for most transgender people as they live with modest means or in poverty. Additionally, transgender people are reluctant to use these services as they fear being the “guinea pigs” for inadequately trained or inexperienced doctors; they want to save up money to travel to Thailand, but of course this is also practically impossible for almost all of them. Further, transgender people largely do not get sex reassignment surgeries done because a lot of maintenance and care is required in the form of regular cleaning of the constructed vagina, else infections including fungal infections are

possible. Also, for transgender people engaged in sex work, this poses a challenge, for if their clients discover that they have a vagina, they will insist for or even forcibly have vaginal sex. It is difficult to have vaginal sex regularly and the constructed skin can get loose.

Grievance Redress

Under directions from the government, exclusive grievance redress meetings are being organised once every three months by district collectors. This initiative has been particularly successful in opening direct channels for dialogue and negotiation between the community and the administration. In 2008, a group of 200 transgender people met the Thiruvallur district collector and requested some land to address housing issues which the collector promised to look into.

While these are significant developments, the Tamil Nadu government *needs to continue consulting with the aravani community through the Transgender Welfare Board to ascertain their needs and formulate policies and programs to address them. Housing, skills training, microcredit, and health services are areas that need immediate attention. Sustained efforts are required to educate and sensitise society so that transgender children and youth are not cast out of families, driven out of schools and jobs, or ill-treated in healthcare institutions.*

CONCLUSION AND RECOMMENDATIONS

States have committed to promote, protect and fulfil the rights of all people to receive the highest standard of sexual and reproductive health (7.2, ICPD PoA); this includes transgender people. Hence, States are required to create and implement laws, policies and programs that facilitate transgender people's access to education, health, housing, work and an adequate standard of living, and eliminate discrimination and other forms of violence faced by transgender people at the hands of society, police and the judiciary. With five years remaining before the completion of the

What is required in Asia is a comprehensive, and above all, rights-based response; a response that seeks to build an environment where the rights of all members of society, especially the most vulnerable, are protected. Policies and laws are needed to empower marginalised groups and create a supportive framework for action, as well as to provide protection against discrimination.

(UNDP, 2004)

20-year period to which governments have committed to achieving several things (among them universal access to reproductive and sexual health), States can still take steps to do so using the recommendations made throughout this report.

States should recognise sexual rights as separate from reproductive rights but closely linked with the same. Realisation of reproductive rights is not possible without a complete realisation of sexual rights, and vice versa. One should take care not to collapse the sphere of sexual rights within reproductive rights and understand that these do not exist for LGBTI or women per se, but for all persons equally regardless of gender, sexual orientation, class, age, race, ability, religion or any other status. Therefore, sexuality is an issue for all people and for all movements. Sexuality movements need to address underlying structures of oppression and not just their manifestations. Sukthankar (2005) notes that various movements for rights of sexual minorities, whether advocating positive rights or negative rights, need to challenge the basic issue of State control over the body. When identified thus, the struggle for sexuality and gender rights can be widened by including a number of other movements such as transgender people's rights, women's rights, children's rights, human rights, Dalit rights, reproductive rights, health, anti-communalism, etc. Inherent in this is the recognition that persons have multiple identities and experience multiple kinds of violation based on those identities. This will create a

strong coalition that approaches rights issues with a deeper understanding of the problems while working towards comprehensive and democratic solutions.

Most sexuality-related policy and program formulation and advocacy take place using a public health framework. A prime example of this is the Delhi High Court litigation challenging the constitutional validity of Section 377^{xvi} of the Indian Penal Code by stating that it impedes HIV prevention efforts among men who have sex with men and transgender people. While this is a strategic decision for civil society advocates, given that the public health argument is more persuasive for governments than human rights arguments, it is important for governments and civil society to work towards creating an environment where human rights are the bases for all actions. As Correa, Petchesky and Parker (2008, p. 152) argue, the human rights framework is not flawless in that it tends to “ignore cultural and historical differences” and often lacks effective enforcement mechanisms. However, it is currently the most comprehensive framework for “making social and erotic justice claims and seeking redress or accountability.”

Within the human rights framework, advocates set their sights on legal reform, as argued earlier in this report. Laws and legal systems do not operate in a vacuum, but in a social, cultural and political environment at a historical point in time. For example, in the case of the Nepal Supreme Court litigation, international treaties and jurisprudence, the nation’s shift to democracy, an active and visible LGBTI movement built over 8 years, and growing public acceptance of LGBTI rights played a major role in the successful judgement. In Thailand, as discussed before, the development of laws and policies affirming health and rights has been affected by the political agenda of those in government. Therefore, it is critical not only to map shifts in the social, cultural and political environment but also to influence them.

Influencing policies is another area of particular importance as affirmative policies contribute greatly towards empowering marginalised communities and towards their development, as observed in the case of Tamil Nadu in India. ***Political will needs to be created and inspired to bring about policy change to empower and develop communities, and thus societies.*** Policies would be even more empowering if the process of formulating them was consultative and ensured the meaningful participation of all

those communities and stakeholders being affected by it. Affirmative action should be planned in such a way that it offers immediate benefits to communities and provides opportunities to assist them in acquiring the average standard of quality of life available in society. The long-term policy vision must be of creating a social environment where all individuals and communities are able to access available services and opportunities equally.

Transgender people need government acceptance, societal acceptance and family acceptance. We do not need special treatment in the form of free housing or reservations in jobs or education. We need basic rights. We need to be treated with dignity, to be treated as all other people are and to not be ridiculed, abused, beaten or cast out of homes and society. Then we will be able to access health care and education as all others do, and contribute to society the same as others.

Vidya Venkat, Chennai

Movements need to pay greater attention to public education and sensitisation, and shaping people's perspectives and mindsets towards acceptance of diversities. This includes (but is not limited to) key stakeholders such as health care personnel, educationists, researchers, community leaders, religious leaders, lawyers, police personnel, judiciary, policy makers and law makers. The immediate objective of such education and sensitisation must be to end violence perpetuated by these actors on transgender people. In the long run, such education must aim to create an enabling environment for all persons to attain sexual citizenship^{xvii}.

The importance of empowering marginalised individuals and communities cannot be underscored enough. It is not enough to reform social and State institutions; the communities need to be empowered to engage with society and State. In Nepal, Pinky shared that interaction with the LGBTI rights movement and participation in capacity building workshops have helped many previously submissive and quiet transgender people develop confidence to respond to harassment and demand rights. In Tamil Nadu, development initiatives such as Tamil Nadu AIDS Initiative's (TAI) *Araychi Mani* (Bell of Distress) violence redressal mechanism^{xviii}, Peer *Jeevan* Collective^{xix} (Peer Life Collective), and *Natpukoodam*^{xx} (Friends Clubs) provide services and at the same time

serve to empower the transgender community and strengthen their confidence and sense of self-worth. Increased agency with regards to themselves, their relationships, communities, social spaces, economics and politics will lead to greater access to health services, legal redress and political participation, which in turn increases agency – it is a continuous and cyclical process. Correa, Petchesky and Parker (2008, p. 4) describe empowerment as socially engaged agency which reduces risk and vulnerability, and promotes erotic justice and sexual freedom. Slamah (2005, p. 105) emphasises the same concept when she notes of the *mak nyahs* in Malaysia: “Taking action on our own behalf created a sense of empowerment for us as a community.” Montoya and Becerra (2009) recommend *interventions to strengthen transgender organisations, specific allocation of funds to transgender people that are managed by them and inclusion of transgender people in design and implementation of projects*. There is also a need for *legal awareness among the transgender community, support groups, and inclusion in policy making and law drafting processes*. These recommendations and those made throughout the report are compiled in the following pages.

Table 1: Recommendations for Governments, NGOs and Donors

Needs/Recommendations for	Governments	NGOs	Donors
Need to incorporate issues of gender and sexuality (refer p.18 and 19).	In law, policies, programs: take affirmative action. Consult transgender people in formulating law, policy and programs that affect them.	In internal policies and programs. Training, sensitization and awareness of gender and sexuality issues and concepts; encourage critical reflection on these. Make linkages with other rights-based groups/movements where applicable.	In internal policies, programs; fund programs for transgender people; incorporate transgender issues in a broad range of programs.
Change laws including religious laws that criminalize or discriminate against LGBTI people including marriage and adoption laws (refer p.22).	Review laws with focus on issues of LGBTI people. Form a committee for the same, with ¾ of its members comprising LGBTI people. Change laws found to be discriminatory based on recommendations.	Litigate for change of laws. Develop legal awareness among transgender people and empower them to participate in such processes. Identify allies within religious bodies to read scriptures in new light and change laws.	Fund organising of transgender people, legal awareness programs and legal advocacy.
Need anti-discrimination laws (refer p.11).	Constitute laws that prohibit discrimination, prejudice and violence based on sexual orientation and gender identity in consultation with LGBTI.	Draft law; advocate with key government officials to get it approved.	Fund legal advocacy; facilitate constructive dialogue.
Need for laws and policies to update citizenship, identity cards and official records with gender	Consult transgender people in formulating such law and policies.	Draft law; advocate with key government officials to get it	Fund legal advocacy; facilitate constructive dialogue.

Needs/Recommendations for	Governments	NGOs	Donors
identity or changed sex, and legalise sex reassignment operations (refer p.15 and 19).		approved.	
Implement programs to empower transgender people and organisations (refer p. 20, 31 and 32).	Fund programs for transgender people such as peer education and vocational training.	Develop and implement programs for transgender people such as support groups, counselling, peer education, life skills, legal awareness and vocational training. Organise transgender people. Seek partnerships and linkages with other social justice movements where applicable and share skills, services, perspectives; for example, movements of youth rights, children's rights, health, habitat and housing, women, human rights, legal advocacy and reform groups, civil liberties etc.	Fund programs such as support groups, counselling, life skills, peer education, legal awareness and vocational training. Fund transgender organisations. Connect transgender organisations with other organisations, facilitating sharing of perspective and skills.
Establish affirmative action for transgendered people including jobs, capital and housing (refer p.20 and 21).	Establish a committee with at least half of its members comprising LGBTI people to draft a plan for affirmative action. Ensure that the plan is implemented across the country.	Advocate with government for affirmative action. Implement affirmative action in hiring policies as well as organisational programs.	Fund learning exchanges, training and advocacy. Implement affirmative action in hiring policies as well as organisational programs.
Build public awareness and opinion about gender and sexuality diversities (refer p.11 and 12).	Develop and communicate public service messages that include issues of LGBTI people. Allot programming slots on public media (radio, television).	Implement public education programs and further discourse on masculinity, femininity, gender plurality, including targeting families to enable them to play supportive and empowering roles.	Fund public education programs; contribute to the public discourse.
Sensitise health personnel,	Partner with NGOs to implement	Partner with government to	Fund sensitization and awareness

Needs/Recommendations for	Governments	NGOs	Donors
teachers, police and judiciary on gender and sexuality (refer p.12-3).	sensitization and awareness programs.	implement sensitization and awareness programs.	programs; facilitate government and civil society partnership.
Need for gender plural and non-heterosexist education curriculum, particularly sexuality education; institutional support for transgender students (refer p.16).	Partner with NGOs to review and revise curricula.	Partner with government to review and revise curricula.	Fund organisations working on reforming education curricula.
Laws need to be more specific so that they are not interpreted to enforce heteronormativity, for example, laws regarding indecent behaviour, unnatural sex, obscenity.	Review and revise laws in partnership with organisations working on women's rights, sexuality, human rights and legal reform.	Work in partnership with the government to review and revise laws.	Fund legal reform.
Need to ensure that HIV-infected persons and AIDS patients have access to treatment and medical care (refer p.17).	Educate healthcare personnel on HIV and AIDS, and train them to fulfil their responsibilities.	Partner and advocate with the healthcare system to ensure access to treatment and care.	Fund training, sensitisation and advocacy.
Need for research on transgender people's health issues and health infrastructure to respond and adapt to the needs of transgender people (refer p.19-20).	Fund research on transgender people's health issues. Formulate policies and allocate funds for health infrastructure to respond to the needs of transgender people.	Advocate for research on transgender people's health needs and policies.	Fund advocacy and research; connect advocates and researchers to facilitate sharing of perspective and working together.
Rape laws need to offer protection to all persons including men and transwomen, and to recognise the multiple dimensions of rape and sexual assault beyond the physical act.	Review and revise rape laws in consultation with organisations working on human rights, women's rights, sexual rights and children's rights.	Women's rights, human rights, sexual rights and children's rights groups to advocate for change of rape laws, and further understanding of rape, gender power and oppression.	Fund legal advocacy and public education.

Needs/Recommendations for	Governments	NGOs	Donors
LGBTI movements need to democratise their politics and be more inclusive (refer p.13).		Further dialogue within the movement on issues and rights of different sexual minorities and be mindful of these in programming and advocacy.	Support movement-building processes and activities.
Educate sexual minority movements on gender, sexuality (refer p.13-14).		Further dialogue on gender and sexuality among various movements.	Fund organisations working on gender, sexuality, leadership and movement building.

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In Thailand

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In Tamil Nadu, India

Glady, Vidya Venkat, Priya Babu

ENDNOTES

ⁱ This term is used to denote a dominant societal ideology which prescribes rigid gender roles and compulsory heterosexuality.

ⁱⁱ A Ration Card is a document issued under an order or authority of an Indian State Government, as per the Public Distribution System, for the purchase of essential commodities from fair price shops. It has become an important tool of identification for Indian citizens.

ⁱⁱⁱ The Act does not define “indecent behaviour”, and therefore it is up to the discretion of the police to determine what constitutes “indecent behaviour.”

^{iv} In Malaysia, before 1996, people who had had sex reassignment operations could change their name on their identity cards but there was a change of policy that year, after which a person's original name could not be changed, and the sex would have to remain as per what was on the birth certificate. A person getting a sex reassignment operation could have a new name added to their birth name, resulting in two names on the identity card - one male and one female. As a result, post-operative transsexual people cannot marry people of the sex other than their acquired sex; technically it would amount to same sex marriage, which is not allowed in Malaysia (Slamah, 2005). This move shows the State's concern with reproductive capacities of individuals and couples (or lack thereof), and not with one's right to express one's gender expression and identity, or one's right to choose one's partner.

^v The Yogyakarta Principles is a set of international legal principles on the application of international law to human rights violations on the basis of sexual orientation and gender identity. These principles recognise that sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse. The principles were drafted by a distinguished group of international human rights experts at a meeting held in Yogyakarta, Indonesia, from November 6-9, 2006.

^{vi} On December 17, 2007, the Tamil Nadu AIDS Solidarity Action (TASA), which is a network of 18 NGOs, ActionAid and the State Commission for Women (SCW) organised a public hearing where members of the transgender community spoke of human rights violations and other atrocities they faced. Listening to them was a six-member jury – K.M. Ramathal, chairperson of the SCW; K. Sampath Kumaran, retired Punjab High Court Judge; K.M. Marimuthu, former Vice-Chancellor of Bharathiyar University; Ossie Fernandez, director of Human Rights Research and Advocacy Foundation; P. Kalimuthu, former Tamil Nadu Director General of Police; and Qudsia Gandhi, member of the SCW – whose recommendations formed a key input for the State government's decisions, including forming a Transgender welfare Board.

^{vii} Women's groups in Thailand advocated for married women to have the right to choose to be addressed as Ms. or Mrs., and succeeded.

^{viii} Sex reassignment surgery (SRS) is a term for the surgical procedures by which a person's anatomy, physical appearance and function of their existing sexual characteristics are altered to resemble that of the other sex. Sex reassignment therapy (SRT) is an umbrella term for all medical procedures regarding sex reassignment of both transgender and intersex people. SRT alters physical sexual characteristics to more accurately reflect the individual's psychological/social gender identity. SRT can consist of hormone replacement therapy (HRT) to modify secondary sex characteristics, SRS to alter primary sex

characteristics, facial feminization surgery, breast augmentation and permanent hair removal for transwomen, and mastectomy and chest reconstruction for transmen.

In addition to undergoing medical procedures, transsexual people who go through sex reassignment therapy usually change their social gender roles, legal names and legal sex designation, where this is permitted.

^{ix} Under S.320 of the Indian Penal Code, “emasculat[i]on” (castration) is listed as grievous form of hurt, for causing which one can be punished under S.325. An exception to this is made under S.88, which states that if an act is done in good faith and with consent of the other, it is not considered an offence. The validity of consent given by a person seeking SRS may come under doubt, since they are diagnosed with Gender Identity Disorder, a psychiatric disorder. Under S.90, consent given by an “insane person” – someone who is of unsound mind, and “is unable to understand the nature and consequence of that to which he gives his consent.”

^x In many countries or areas, an individual's pursuit of SRS is often governed, or at least guided, by documents called Standards of Care for Gender Identity Disorders (SOC). This most widespread SOC in this field is published and frequently revised by the World Professional Association for Transgender Health (WPATH, formerly the Harry Benjamin International Gender Dysphoria Association). Some alternative local standards of care exist such as in the Netherlands, Germany, and Italy.

Standards of Care usually give certain very specific "minimum" requirements as guidelines for progressing with SRT. For many individuals, these may require a minimum duration of psychological evaluation and living as a member of the desired gender full time (sometimes called the real life experience (RLE)) before genital reconstruction or other sex reassignment surgeries are permitted. For this and many other reasons, both the WPATH-SOC and other SOCs are highly controversial documents. Many transgender people assert that these do not acknowledge the rights of self-determination and control over one's body, and expect (and even in many ways require) a monolithic transsexual experience. Many qualified surgeons in North America and many in Europe adhere strictly to the WPATH SOC or other SOCs. However, many experienced surgeons are able to apply the WPATH SOC in ways which respond to an individual's medical circumstances, as is consistent with the SOC.

^{xi} The International Bill of Gender Rights articulates basic human rights for transgender people. It enunciates ten rights that are universal rights which can be claimed and exercised by every human being regardless of sex or gender.

^{xii} Naz Foundation (India) Trust filed public interest litigation in the Delhi High Court in 2001, arguing that Section 377 of the Indian penal Code (which criminalises “carnal intercourse against the order of nature”) is unconstitutional and calling for the exclusion of adult consensual sex in private from the scope of this law. On 2nd July 2009, the Delhi High Court judgement in the case was pronounced whereby it excluded adult consensual sex in private from the purview of this law.

^{xiii} Non-Discrimination in International Law: A Handbook for Practitioners, Edited by Kevin Kitching (INTERIGHTS, January 2005). Available at <http://www.interights.org/handbook/index.htm>

^{xiv} Available at http://archive.psych.org/edu/other_res/lib_archives/archives/amicus/02-102.pdf

^{xv} Sunil Babu Pant, former President of Blue Diamond Society accepted the CPN United offer, stood for election and got elected to the Constituent Assembly.

^{xvi} The Section relating to “Unnatural offences” states: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fines.

Explanation – Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

^{xvii} Sexual citizenship depends on sexual rights being protected by the State and also social, cultural, religious, scientific, political and other actors respecting sexuality, sexual diversity, sexual rights and the right of all individuals to sexual pleasure, and can be realized in an environment where the principles of inclusion, equality, freedom and dignity are upheld.

^{xviii} This intervention ensures response to instances of violence within 24 hours through medical, legal and counselling aid.

^{xix} Spread across 13 districts of Tamil Nadu, this collective comprises 1,650 peer educators reaching out to transgender people in their locality with information on STDs, HIV/AIDS and legal aid. Additionally, they distribute condoms, coordinate self-help groups and Friends Clubs and work to address violence within 24 hours through the *Araychi Mani* rapid response mechanism.

^{xx} These are drop-in centres where transgender people have access to low-cost beauty services, food and clothes banks as well as information on safe sex practices.

REFERENCES

Correa, S. & Careaga, G. (2004). *Is Sexuality a Non Negotiable Component of the Cairo Agenda?* Available at <http://www.dawnnet.org/publications/docs/non-negotiable-2520sexuality-2520aug04.doc>

Correa, S., Petchesky, R. & Parker, R. (2008). *Sexuality, Health and Human Rights*. Oxon: Routledge.

Germain, A. and Kyte, R. for International Women's Health Coalition (1995). *The Cairo Consensus: The Right Agenda for the Right Time*. USA.

Human Rights Watch. (2008). *This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism*. Available at

<http://www.hrw.org/en/reports/2008/12/17/alien-legacy-0>

International Conference on Transgender Law and Employment Policy (ICTLEP) (1995). *International Bill of Gender Rights*. Available at http://www.liberatinglaw.com/media/DIR_13185/FRYE11b-IBGR.pdf

Montoya, J.E. and Becerra, A.G. (2009). Gender and HIV/AIDS Reconfigurations in Male to Female Transgender People in Colombia. *Paper presented at VII Conference – International Association for the Study of Sexuality, Culture and Society, Hanoi, Vietnam, 2009*.

Peoples' Union for Civil Liberties, Karnataka [PUCL-K] (2003). Human Rights violations against the transgender community: A study of kothi and hijra sex workers in Bangalore, India.

Programme of Action of the International Conference on Population and Development. Available at <http://www.unfpa.org/icpd/icpd-programme.cfm>

Revathi (2005). A Hijra's Own Story. In Narrain, A. and Bhan, G. (Eds.) *Because I Have A Voice: Queer Politics in India*. New Delhi: Yoda Press.

Sanders, D. (2008). Third Sex Identities and Transgender Rights: Policies in Asia and the West. *Paper presented at VII Conference – International Association for the Study of Sexuality, Culture and Society, Hanoi, Vietnam, 2009*.

Slamah, K. (2005). The Struggle to be Ourselves, neither Men nor Women: *Mak Nyahs* in Malaysia. In Misra, G. and Chandiramani, R. (Eds.) *Sexuality, Gender and Rights: Exploring Theory and Practice in South and Southeast Asia*. New Delhi: Sage Publications.

Sukthankar, A. (2005). Complicating Gender: Rights of Transsexuals in India. In Narrain, A. and Bhan, G. (Eds.) *Because I Have A Voice: Queer Politics in India*. New Delhi: Yoda Press.

Teh, Y. K. (2001) *Mak Nyahs* (Male Transsexuals) in Malaysia: The Influence of Culture and Religion on their Identity. *IJT* 5,3, http://www.symposion.com/ijt/ijtvo05no03_04.htm

UNDP (2004). Law, Ethics and HIV/AIDS in South Asia: A study of the legal and social environment of the epidemic in Bangladesh, India, Nepal and Sri Lanka.

World Health Organization [WHO] (2006). Defining sexual health: Report of a technical consultation on sexual health, 28–31 January 2002, Geneva.

(2007). Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. Available at <http://www.yogyakartaprinciples.org/>

Web References

Gloria Elayadathusseril (May 08, 2008), <http://www.thestar.com/article/422553>

Paisarn Likhitpreechakul (November 03, 2008), <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/552.html>

Ramya Kannan (June 20, 2008), <http://www.hindu.com/2008/06/20/stories/2008062061521200.htm>

Suggested Readings

Benjamin, H. (1966). *The Transsexual Phenomenon*. New York: The Julian Press, Inc. Publishers. E-book available at <http://www.symposion.com/ijt/benjamin/index.htm>

Human Rights Commission of New Zealand (2008). *To Be Who I Am: Report of the Inquiry into Discrimination Experienced by Transgender People*. Available at http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/15-Jan-2008_14-56-48_HRC_Transgender_FINAL.pdf

Nanda, S. (1990). *Neither Man Nor Woman: the Hijras of India*. Belmont, CA: Wadsworth Publishing.

Reddy, G. (2005). *With Respect to Sex: Negotiating Hijra Identity in South India*. Chicago: University of Chicago.

Sinnott, M. (2004). *Toms and dees: Transgender identity and female same-sex relationships in Thailand*. Chiang Mai: Silkworm Books.

Additional References

<http://afp.google.com/article/ALeqM5iryUiYCXAYeTYcqEvVtMJAcCwHQ>

http://en.wikipedia.org/wiki/Transgender_Rights_in_Tamil_Nadu#cite_note-1

<http://infochangeindia.org/200804147036/Human-Rights/News/TN-constitutes-welfare-board-for-transgenders.html>

<http://news.bbc.co.uk/2/hi/asia-pacific/3149896.stm>

<http://news.bbc.co.uk/2/hi/asia-pacific/7529227.stm>

http://news.bbc.co.uk/2/hi/south_asia/4202893.stm

<http://teakdoor.com/thailand-and-asia-news/32901-thai-government-probe-in-ladyboy-flap.html>

http://timesofindia.indiatimes.com/Cities/Third_gender_option_in_TN_college_forms/articleshow/3037991.cms

<http://transgriot.blogspot.com/2009/03/malaysias-muslim-transsexuals-battle.html>

<http://www.allnewsweb.com/page1901904.php>

<http://www.geocities.com/leylasuhagi/hijra.html>

<http://www.glapn.org/sodomylaws/world/indonesia/idnews001.htm>

<http://www.globalpolitician.com/24711-india-transgender>

<http://www.hindu.com/2008/05/05/stories/2008050560090700.htm>

<http://www.hindu.com/2008/09/11/stories/2008091152550300.htm>

<http://www.hindu.com/fline/fl2504/stories/20080229507610200.htm>

<http://www.hinduonnet.com/fline/fl2504/stories/20080229607610000.htm>

http://www.iol.co.za/index.php?set_id=1&click_id=3&art_id=qw1102670469274B234

<http://www.medindia.net/news/Southern-Indian-State-to-Conduct-First-Ever-Census-of-Transgenders-37201-1.htm>

<http://www.newgrounds.com/bbs/topic/1031252>

http://www.nodo50.org/Laura_Agustin/cambodia-ladyboy-rescue-effort-goes-wrong

<http://www.shortnews.com/start.cfm?id=77707>

<http://www.telegraph.co.uk/news/worldnews/1584385/Thai-surgeons-reject-cosmetic-castration-ban.html>

<http://www.telegraph.co.uk/news/worldnews/asia/thailand/2156544/Thai-school-builds-transgender-toilet.html>

<http://www.thailawforum.com/news/2009/news-Jan-09.html>

http://www.thaindian.com/newsportal/uncategorized/same-sex-marriage-gets-court-nod-in-nepal_100120554.html