



Rapid Situation Assessment of Transgender Persons in Sri Lanka

Final Draft

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Table of Contents

Acknowledgements	6
Acronyms and Abbreviations	7
Executive Summary	i
1. Introduction	1
HIV/AIDS and Transgender Persons	1
Vulnerability of Transgender Persons in the Context of HIV/AIDS	2
Stigma, Violence, Discrimination and Marginalization	3
Transgender Sex Workers or Nachchi in Sri Lanka	4
Sexual Behavior	5
Access to Healthcare	6
Sex Change Operations	6
Focus on Transgender community	6
Role of the Health Sector	7
Prevention strategies	8
Strategies from Human Rights Perspectives	9
Policy and Legal Environment: Review and Recommendations	15
2. Transgender Persons and the Law in Sri Lanka	16
Non Discrimination and Equality	16
Constitution of Sri Lanka	17
Penal Code, Section 399 - 'Cheating by Personation'	17
The Vagrants Ordinance, No 4 of 1841	18
Penal Code (Amendment) Act No 22 of 1995, Section 365 – 'Unnatural Offence'	19
Sexual and Gender Based Violence	20
Penal Code (Amendment) Act, No. 22 of 1995, Section 345	21
Penal Code (Amendment) Act, No. 22 of 1995, Section 363	21
Prevention of Domestic Violence Act, No 34 of 2005	22
Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act, No. 20 of 1998	22
New Developments in Protecting Transgender Persons	22

3. Background and Objectives	25
About the study	25
Context.....	25
The Scope of the Assessment	28
Objectives.....	29
4. Assessment Approach and Methodology	30
Assessment Approach.....	30
Data Collection Tools	30
Desk Review	30
The Questionnaire Survey.....	31
Key Informant Interviews (KIIs).....	31
Focus Group Discussions (FGDs)	32
Selection and Training of Field Team.....	32
Sampling.....	32
5. Findings	34
Socio Demographic Data.....	34
Age of the respondents.....	34
Ethnicity	34
Religion.....	35
Sex at Birth and Gender Identity.....	35
Education	36
Employment.....	37
Workplace Discrimination and Access to Employment	38
Sexual Experiences and Behavior	40
Knowledge on the Transmission of HIV	41
Knowledge on Prevention of HIV Transmission.....	42
Condom Use.....	43
Testing For HIV and STI	44
Experience in the Clinic Setting.....	46
Psychological health.....	46
Harassments from police and awareness about laws among transgender community	47
Population Size of Transgender Persons.....	48

6. Conclusions and Recommendations.....	51
Conclusions	51
Human Rights Situation for Transgender People.....	52
Evidence Base on Transgender People and HIV	53
Population Size.....	53
Socio Demographic and Cultural Information	53
Sexual Behaviour.....	54
Health Services and Health Seeking Behavior	54
Recommendations	55
REFERENCES	56
Annex 1 - Survey.....	63
Annex 2 - Key Informant Interviews	72
Annex 3 - Guide for Focus Group Discussions	77
Annex 4 – Detailed Review of Literature	84

List of Figures

Figure 5.1: Age of the Research Participants	34
Figure 5.2: Ethnicity	34
Figure 5.3: Religion.....	35
Figure 5.4: Level of Education	36
Figure 5.5: Engaging in Sex Work.....	38
Figure 5.6: Harassments faced at the workplace	39
Figure 5.7: Sexual Acts	40
Figure 5.8: Sexual partners of transgender persons.....	40
Figure 5.9: Relationship to the person whom they had sex first during their childhood	41
Figure 5.10: Sexual act with highest risk of HIV transmission according to respondents	41
Figure 5.11: Sexual acts which HIV can be transmitted.....	42
Figure 5.12: How to reduce the risk of HIV transmission according to Respondents	42
Figure 5.13: condom Use.....	43
Figure 5.14: Attitudes and practices towards use of condoms	44
Figure 5.15: Last HIV test.....	45
Figure 5.16: Have you ever been diagnosed with a STD	45
Figure 5.17: Attitudes towards Health staff.....	46
Figure 5.18: psychological health and access to counselling services.....	46
Figure 5.19: Reasons for the arrest	47
Figure 5.20: Transgender population in different countries	49

List of Tables

Table 4.1: Target Group, Location, Data Collection Tools, Sampling Method and Sample Size	33
Table 5.1: Employment of Respondents	37
Table 5.2: HIV testing	44
Table 5.3: Higher percentage of TGs who are regularly tested for HIV	45
Table 5.4: Awareness on the laws affecting transgender persons	48

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Acronyms and Abbreviations

APA	- American Psychological Association
APCOM	- Asia Pacific Coalition on Male Sexual Health
BB	- Beach boys
FPA	- Family Planning Association of Sri Lanka
FSWs	- Female Sex Workers
FTM	- Female To Male
GBV	- Gender Based violence
GFAMT	- Global Fund for AIDS, Malaria and Tuberculosis
GID	- Gender Identification Disorder
GOSL	- Government of Sri Lanka
ICRW	- International Centre for Research on Women
IGLHRC	- International Gay and Lesbian Human Rights Commission
IPPF	- International Planned Parenthood Federation
LBT	- Lesbians, Bisexual Women and Transgender people
LGBT	- Lesbian, Gay, Bisexual, and Transgender
LGBTIQ	- Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning
MSM	- Men who have Sex with Men
MToF	- Male to Female
NACO	- National AIDS Control Organization
NGO	- Non-Governmental Organization
NHM	- National Health Mission
NSACP	- National STD/AIDS Control Programme
NSP	- Needle and Syringe Programmes
OST	- Opioid Substitution Therapy
PLHIV	- People Living with HIV

PWID	-	People Who Inject Drugs
PWUD	-	People Who Use Drugs
RSAT	-	Assessment of Transgender Persons
SEARO	-	South East Asia Regional Office
STIs	-	Sexually Transmitted Infections
TG	-	Trans Gender
UNDP	-	United Nations Development Programme
UNESCAP	-	United Nations Economic and Social Commission for Asia and the Pacific
VCT	-	Voluntary Counseling and Testing
VDRL	-	Venereal Disease Research Laboratory
WHO	-	World Health Organization
WSG	-	Women's Support Group

Executive Summary

This study intends to determine how well Sri Lanka has achieved the provision of universal access to appropriate HIV prevention, care, treatment and support for transgender people. It analyzes human rights situation for transgender persons; develop an evidence base on transgender people and HIV and identifies opportunities to strengthen capacity in providing broader and better responses for transgender people in relation to prevention, control, treatment and care of HIV/AIDS. In order to do so, it critically looks at existing laws, policies and human rights issues affecting transgender persons and attempts to identify both opportunities and gaps in policies and laws which may limit or provide opportunities with regards to the access to health services for transgender persons in relation to prevention and control of HIV. This rapid assessment is funded by the Global Fund for AIDS, Malaria and Tuberculosis (GFAMT) through its local partner, Family Planning Association of Sri Lanka.

The **methodology** included desk reviews (literature review and legal and policy review) and field research (Key Stakeholder Interviews, Survey and Focus Group Discussions). A participatory and inter-active approach in data collection was followed throughout the assessment. Mix of quantitative and qualitative methods were used to collect data and information.

Transgender is an umbrella term for people whose gender identity and expression does not conform to the norms and expectations typically associated with the sex assigned to them at birth (WHO, 2014; APA 2015) ; it includes people who are transsexual, transgender or otherwise gender non-conforming. Transgender people may self-identify as transgender, female, male, trans-woman or trans-man, trans-sexual or, in specific cultures, as “hijra” (India), “nachchi”¹ (Sri Lanka). They may express their genders in a variety of masculine, feminine and/or androgynous ways.

The widespread stigma, discrimination, violence and marginalization faced by transgender persons make them more vulnerable to HIV/AIDS (Human Rights watch: World Report 2016). Epidemiological data generally reflect the failure to respond adequately, to the human rights and public health needs of those affected with HIV/AIDS or preventive measures for the Key Populations (WHO, 2014).

Stigma and discrimination, leading to low self-esteem and disempowerment, can make it harder for transgender people to insist on condom use. Studies have shown that some transgender people who want to affirm their gender identity through sex, or who fear rejection from sexual partners can more likely to agree to unprotected sex. (Averting HIV

¹ *Nachchi* was an insider term used by a group of sex workers **best conceptualized using western understandings as both transgender and homosexual**: *nachchi* celebrate their feminine gendered subjectivity, but also embrace key facets of their biological ‘maleness,’ and are ardent in their sexual desire for men (Miller and Nichols 2012)

and AIDS: 2015). Social exclusion is a major hurdle that transgender and other sexual minority communities go through.

Sexual harassment in workplace and public places take away the dignity of individuals and reduce their abilities to engage in normal work settings. In school settings, transgender children and young adults face abuses ranging from sexual assault, to bullying, to being forced to attend a single-sex school or wear a uniform based on the gender marker assigned at birth (Chandimal, 2015).

The **political and legal environments** of most of the countries in South Asian region remain hostile towards the sexual minority population and the populations suffering from HIV. The repressive laws fail to fulfill the human rights of the vulnerable section of population. However in recent times in Sri Lanka, policy makers have given considerable attention towards the rights of transgender persons.

There are no specific laws or policies which provide protection to transgender persons. Though non-discrimination and equality before the law are recognized as fundamental rights in the Constitution of Sri Lanka, they do not explicitly refer to non-discrimination based on sexual orientation and gender identity. This issue has been pointed out in number of research reports (WSG, 2014; Chandimal, 2015; Human Rights Watch, 2016), and before the Human Rights Review Committee of ICCPR in 2014 and Sri Lankan government responded that LGBT persons are protected under the constitution². Also this has been highlighted in at least two shadow reports by NGOs³.

The **findings** of the study reveals that at least 31% of the participants were youth, while the majority of participants were between the ages of 25 -35 years. The majority 69% belonged to Sinhala ethnicity, while 27% belonged to Tamil and 4% belonged to Muslim ethnicities. 59% of the sample was Buddhists, while 29% were Christians and Catholics, 8% were Hindus, and 4% were Islamic.

Forty Six percent (46%) of the participants indicated that they engage in sex work, out of which 28% engage in sex work on full time basis. According to UNAIDS gap report in 2014, HIV prevalence is up to 9 times higher for transgender sex workers as compared to female sex workers. The safe sex practices among transgender persons are also very low. Only 25% mentioned that they use condoms when they engage in sex work. 10% observed that they have never used condoms in oral sex, while 4% mentioned that they never used condoms for anal sex.

² www.outrightinternational.org (2014) "Sri Lanka government says lgbt rights are constitutionally protected" URL: <https://www.outrightinternational.org/content/sri-lanka-government-says-lgbt-rights-are-constitutionally-protected>

³ Women's Support Group (2011). NGO shadow Report submitted to the Committee on the Elimination of All Forms of Discrimination Against Women. Equal Ground; Center for International Human Rights; Heartland Alliance for Human Needs & Human Rights; Global Initiative for Sexuality and Human Rights (2013). Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka: A Shadow Report Submitted for consideration at the 110th Session of the Human Rights Committee. URL: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf

The basic knowledge on modes of HIV transmission is also low among transgender community. HIV testing is higher among the transgender persons. Majority 83% of the sample has been tested for HIV, while only 37% have been tested for other STIs at least once within last two years, which highlights the priority given to HIV/AIDS due to funding priorities.

In general transgender persons mentioned that they are treated well at the health settings, though in very few cases, they have faced verbal and non-verbal harassments mainly from the minor staff of health settings.

The psychological stress experienced by transgender people is very high due to the stigma, discrimination and violence faced by them. 64% of the respondents mentioned that they have experienced psychological pressure and other psychological issues due to the issues relating to their sexual orientation and gender identity, while 54% of the respondents mentioned that they had feelings of committing suicide.

Nearly 50% of the respondents mentioned they were either arrested or detained by the Police due to reasons of engaging in sex work, cross dressing, and loitering on the roads in the night time and other reasons.

At least 25% of transgender persons believe that they do not have enough knowledge about laws criminalizing homosexuality, vagrancy ordinance, impersonation laws, fundamental rights and constitutional protections, while 2% -4% of transgender persons who were not aware of these laws and process of amending Birth certificate and National identity card.

There are no mappings or estimations previously on the size of transgender population in Sri Lanka. Though the number of transgender persons interviewed in this rapid assessment was limited to come up with an estimation of transgender population.

Recommendations arising out of the study are discussed in Chapter 6. The highlights indicate the need for creating awareness and sensitization among all levels of health care staff in the public and private sector health care institutions as most of the harassments at health settings happen from the minor staff and also the need for educating transgender persons across the country using Behaviour Change Communication processes on prevention and control of STIs and HIV/AIDS and knowledge on gender transition process, resources and services available.

The need for improving STI clinics with transgender friendly facilities and creating awareness among the staff on TG communities, providing facilities for transgender surgeries at low cost or free of charge, targeted HIV prevention activities especially to the North and East and other areas where Global Fund project is not implemented,

provision of psycho social counseling and mental health services to the LGBT community and their families, establishing trans-specific safe houses, dropping centres at major cities are some of the key recommendations based on the assessment.

Further, awareness creation on laws, policies and legal processes and establishing a hot line for information and legal aid among transgender community, transgender representation at the National AIDS Committee and other top level committees are also considered as important initiatives leading to recognition and visibility and access to services and rights.

In addressing the key issues faced by the transgender community, it is expected that the findings from this assessment will provide evidence for making decisions in the context of possible recommendations and interventions.

1. Introduction

HIV/AIDS being an acquired syndrome tend to affect some sections of the population more than others. The most vulnerable sections of the population that are affected by HIV are the transgender communities and other sexual minorities. The principles of basic human rights talk of how gender development should have no bearing on individuals accessing fundamental rights such as access to health care, education, employment. The gender evolution and development process is universal. But the individuals, such as transgender persons, who break the rigid boundaries of identifying with genders other than the one assigned at birth, tend to face discrimination to a humiliating, violent, and sometimes lethal degree. Such persons often lack the ability or knowledge to protect themselves from HIV infection, due to structural discrimination (lack of access to information and services) which make them more susceptible to HIV (Human Rights watch: World Report 2016). Epidemiological data generally reflect the failure to respond adequately, to the human rights and public health needs of those affected with HIV/AIDS or preventive measures for the Key Populations. ‘Public health and equity considerations underlie the need to prioritize and improve HIV services for key populations’ (WHO 2014). A recent global meta-analysis of HIV prevalence among transgender women documented 19.1% HIV prevalence among transgender women across 15 countries, with the odds ratio of HIV infection among transgender women compared to the general population. These glaring data only provides more incentive to develop better knowledge about the conditions, values, preferences and circumstances of the key populations. This review is geared towards assessing the legal and policy environment related to the Transgender Community, with focus on South Asian environment, particularly in Sri Lanka.

HIV/AIDS and Transgender Persons

Within a western context, a ‘trans-man’ is usually defined as an individual who is biologically female and whose gender identity and gender expression are masculine; while he may/may not undergo surgery, he would carry on with his life as a man. However in Sri Lanka, although there have been a number of newspaper reports of women being ‘disguised’ as men or ‘impersonating’ men, it is difficult to say whether gender expression in each case is legible as a trans-like gender identity. For instance, in some cases that have been documented by the WSG, the individual concerned said she preferred to accentuate her male persona in order to avoid the kinds of sexual harassment that women face on a daily basis. An added complication is that if such individuals live and ‘pass’ on a daily basis, questions about being biologically female might put them at risk. Within the past year, however, there has been an increase in awareness on transgender issues, particularly amongst medical professionals (Women and Media Collective, 2014). ‘Sri Lanka has been characterized as “a society violently intolerant of gender diversity” (Wijewardene, 2007: 1). The same is true of its orientation toward sexual diversity’ (Identity, Sexuality and commercial sex, Miller & Andrea 2012). In

Sri Lanka, the term '**Nachchi**' is used widely to refer to *transgender*, especially the Male to Female Transgender. Historically the terms have been used to refer to cross dressers. In Sri Lanka the nachchis are faced with the challenge of complete erasure in addition to stigma, criminalization and condemnation. The Sinhala term *napunseka*, formally used to refer to nachchi, remains ambiguous in interpretation as there lies confusion whether to address them as eunuchs or hermaphrodites. The term *Ponnaya* is a cruder and colloquial form of nachchi. 'It has multilayered meanings, and is used as a scornful characterization of men who have failed to meet Sri Lanka's hegemonic standards for masculinity' (Millis & Andrea, 2012).

In Sri Lankan society, heterosexual marriage is encouraged, divorce and separation is discouraged, and family violence as well as partner violence is invisibilized. Sri Lanka has a strong patriarchal base, where female independence especially regarding sexual autonomy and gender difference is limited. The private space often emerges as the most oppressive institution for them. For LBT persons, these circumstances are compounded by the fact that they have no other forms of support (for e.g. they may not be able to request help from friends and colleagues, and cannot approach religious communities or government institutions such as the police and even women's sheltering services) (Women and Media Collective, 2014)

Due to the criminalization of the LGBTIQ's conduct in Sri Lanka, 'trans' individuals, female sex workers (FSWs) and men who have sex with men (MSM), Beach boys (BB) and people who use drugs (PWUD) in Sri Lanka are deterred from seeking medical advice or health –care services and this situation has a far reaching impact on the society as they are more vulnerable and susceptible to acquiring HIV/AIDS. According to a report submitted by Sri Lanka, to the UN General Assembly Special Session on HIV/AIDS (2008-2009), it is estimated that there are about 24000-37000 men having sex with men (MSM). Given that Sri Lanka considers homosexuality and transgender activities as criminal offences, they are unable to have legal recognition. This prevents accessing actual data pertaining to the size of this community and also understanding their at-risk behaviour and related health issues.

Vulnerability of Transgender Persons in the Context of HIV/AIDS

The UNAIDS report reveals the vulnerability of the transgender population, specifically the sex workers to incidence of HIV infection. It reports that HIV prevalence is up to 9 times higher for transgender sex workers as compared to female sex workers. The political and legal environment of South Asian countries exaggerate the everyday challenges faced by the key populations. The lack of transgender specific health information and services, discrimination and stigma meted out to Trans individuals' calls for the need to treat minorities sensitively. They form a major portion of the key population affected by numerous intertwined complexities. There have been ongoing concerns about the transgender communities being neglected in Asia and the Pacific.

This review reveals the stigma and prejudice that the HIV affected Trans persons are linked to- on a social, cultural, political and legal arena. Such discrimination is rooted in the cultural beliefs of communities and societies about sexuality and gender norms and non-conforming (ATPN & UNDP: 2012). There is a need to confront the social, sexual and gender norms that push vulnerable populations towards HIV.

Stigma, Violence, Discrimination and Marginalization

Stigma, violence, discrimination and marginalization are everyday life features for TG populations. Discrimination against transgender people may stem from multiple forms of stigma relating to gender identity, gender expression and perceived sexual orientation. Research by the International Centre for Research on Women (ICRW) found the possible consequences of HIV-related stigma to be: (i) loss of income and livelihood; (ii) loss of marriage and childbearing options; (iii) poor care within the health sector; (iv) withdrawal of care giving in the home; (v) loss of hope and feelings of worthlessness; (vi) loss of reputation.

Violence motivated by **homophobia** and **transphobia** is often particularly brutal, and in some instances characterized by levels of cruelty exceeding that of other hate crimes.” In every region in the world, the U.N. continues to receive reports of physical and psychological abuse perpetrated against individuals perceived to be LGBT. In addition, LGBT people are targets for religious extremists, paramilitary groups, and extreme nationalists, and also risk being ostracized by their families and communities. The Gender Based violence (GBV) is a fundamental human rights violation and a serious public health concern. The GBVs are often based on social norms that emphasize on dominant notions of masculinity, and are often seen as the root cause of transphobia and homophobia. Transmen in Asia are forced into marriage and sexual violence. Several countries, including Malaysia, Kuwait, and Nigeria, enforce laws that prohibit “posing” as the opposite sex—outlawing transgender people’s very existence. In scores of other countries, transgender people are arrested under laws that criminalize same-sex conduct.

Human Rights Watch documented rights violations against Malaysia’s transgender women including arbitrary arrests, sexual assault, torture, employment discrimination, stigmatizing treatment by health workers, and a ban on sex reassignment surgery. Across South Asia, the trans people are targeted for harassment, extortion, detention, assault and rape. In many cases transgender people have reported being detained for the purpose of extorting payments, but not prosecuted. These offences include prostitution, vagrancy and public nuisance offences, and indecent behavior in public, breach of the peace, obscenity, and soliciting (APCOM: 2010).

Social Exclusion is a major hurdle that transgender and other sexual minority communities go through. **Sexual harassment in workplace** and **public places** take away the dignity of individuals and reduce their abilities to engage in normal working opportunities. Sri Lankan incidences of **superstitions beliefs** and the use of black magic

are not unheard of. Many instances of trying to cure a TG of his ‘psychological problems’ have resulted in attempts of suicide and other stress disorders among the TG population. It is a recognized fact that in addition to legal protection, the marginalized communities would thrive with provision of better housing, employment and educational facilities and would be led away from the high risk behaviors and suicide attempts that grip them. Lack of jobs, housing, and education are all social factors that enhance the marginalization of Transgender communities.

In educational spheres transgender children and young adults face abuses in school settings ranging from sexual assault, to bullying, to being forced to attend a single-sex school or wear a uniform based on the gender marker assigned at birth. In Malaysia, the Education Department of the Federal Territory (Kuala Lumpur) has an explicitly discriminatory policy that calls for punishment, including caning, suspension, and expulsion, for homosexuality and “gender confusion.” Malta has become a pioneer in recognizing transgender children’s right to education: following its April 2015 legal gender recognition legislation, the government launched comprehensive guidelines for schools to accommodate gender non-conforming students, including through addressing issues related to uniforms and toilets. (Human Rights Watch 2016)

Transgender Sex Workers or Nachchi in Sri Lanka

Transgender sex workers undergo extreme police mistreatment as part of their everyday violence (Nichols, 2010). Studies reveal how police mistreatment abuses reflect the intersectional nature of gendered victimization (Nichols, 2010; Miller, 2012). This victimization is based simultaneously on gender expression and homosexuality of the Nachchi communities. From 2010 to 2012, Women’s Support Group (WSG), a Colombo-based non-governmental organization (NGO) has been providing support and advocacy for lesbians, bisexual women and transgender people (LBT). It documented experiences of violence and discrimination specific to LBT people in Sri Lanka. This initiative, titled the Asia Action Research to Address Violence Against Non Heteronormative Women and Transgender People on the Basis of their Sexual Orientation, Gender Identity or Gender Expression, was part of a five-country project spearheaded by the International Gay and Lesbian Human Rights Commission (IGLHRC), an international organization advocating for the human rights of people who experience violence and discrimination on the basis of their sexual orientation, gender identity or expression. The key findings revealed the emotional violence meted out to the Lesbian, Bisexual, Gay or transgender community in Sri Lanka, due to their sexual orientation, gender identity or gender expression, and the

main perpetrators of this emotional violence is from the family members. It is indicative of Sri Lankan society being subjects of patriarchal authority where heteropatriarchal norms are reinforced. (Women and Media Collective: 2014) The everyday struggle for identity in society only exaggerates the discrimination and stigma that the TG population undergo, which often increase their risk of HIV/AIDS.

Many TGs report a large number of male partners – commercial and non-commercial. The blurring of sexual preferences within these communities is coupled with the lack of awareness of safe sexual practice and the inconsistent use of condoms or lubricants (WHO SEARO 2010). Multiple factors affect the prevalence and vulnerability of HIV among the transgender population:

Sexual Behavior

Stigma and discrimination, leading to low self-esteem and disempowerment, can make it harder for transgender people to insist on condom use. Studies have shown that some transgender people who want to affirm their gender identity through sex, or who fear rejection from sexual partners can more likely to agree to unprotected sex. The stress of social isolation may also lead to a much higher rate of drug and alcohol use among transgender people that can affect their judgment of risk and make them less likely to use condoms (Averting HIV and AIDS: 2015). Limited availability and use of water based lubricants also put the population at risk. Condom use appears to vary according to the type of male partner. In some countries such as Sri Lanka and Thailand, the level of consistent/always condom use with regular male partners was lower than with non-regular male partners. According to a WHO study in 2010, the TG population reported a large number of commercial and non-commercial male partners. For example, in Bangladesh, the majority had up to 20 commercial clients in the past one week during 2004–2005, while one study conducted in 2001 in India showed that 39% had more than 10 partners in the past one month. In Indonesia, the number of partners ranged from 1 to 4 (WHO SEARO 2010). There are high rates of unprotected anal sex among transgender women, which carries a high risk of HIV transmission.

Incidence of Drug Use

Incidence of drug use is a very common issue among transgender, who find it affordable and convenient to carry out gender enhancement by injecting themselves. This is often based on the unavailability of health care services and the inhibitions of the TG population to approach the health care centers and dependence on the black market for getting hormonal medicines. Without proper guidance and counseling the populations become vulnerable to HIV transmissions through sharing needle and other risks. It is estimated that there are 12.2 million PWID worldwide, and around 1.65 million (13.5%) of this population are thought to be living with HIV. Four countries account for 63% of all people who inject drugs - China, Pakistan, Russia and the United States of America (USA)

- reflecting the seriousness of the HIV epidemic for PWID in these countries. HIV prevalence among PWID is highest in South-West Asia (29.3%) and Eastern and South-Eastern Europe (22.8%).

Access to Healthcare

Transgender peoples' access to health care is complicated by the fact that their experiences have been classified as a mental disorder, meaning they must accept this stigmatized diagnosis when accessing health services. In Kuwait, transgender women told Human Rights Watch that medical doctors have reported them to police after noting the gender on their government-issued IDs does not match their appearance and presentation, effectively limiting their access to health care (Human Rights Watch 2016).

The forceful **Reparative Therapy** from psychologists and pressure from families create worse health issues for the 'trans' population, often leading to psychological stress and suicide. (Chandimal, D. 2010).

Sex Change Operations

Some transgender people do not desire surgery to change their bodies, and a surgical requirement is a barrier to legal recognition. Undergoing such surgeries is a risky and costly affair that may not be performed by a majority of surgeons. Privatized or socialized health insurance in South Asian countries usually do not cover gender affirming surgeries making it a more difficult process for persons who desire such procedure. Absence of gender-congruent identity documents may limit access to a range of services, such as health-care and education, as well as employment and voting rights (WHO Policy Brief 2015).

Focus on Transgender community

Informed by the 2009 Joint United Nations Programme on HIV/AIDS (UNAIDS) Action Framework: Universal Access for Men who have Sex with Men and Transgender People, the recently released Global Health Sector Strategy on HIV/AIDS 2011–2015 by the World Health Organization (WHO) has two major goals: (1) to achieve universal access to HIV prevention, diagnosis, treatment and care interventions for all in need, and (2) to contribute to achieving the health-related Millennium Development Goals and their associated targets by 2015. This strategy, along with the UNAIDS Getting to Zero 2011–2015 strategy, is grounded in human rights and demands evidence-based responses that not only focus on, but also involve, key affected populations (WHO APTN, 2013). The constant acts of violence and discrimination against individuals due to their sexual orientation and gender identity was recognized in the United Nations General Assembly in 2011, and subsequently a report was commissioned by the United Nations High Commissioner for Human Rights. The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) released Resolution 67/9, which for the first time recognized the barriers faced by transgender populations in accessing HIV prevention,

treatment, care and support. These actions represent the much required response to the key populations such as men who have sex with men (MSM) and transgender people (World Health Organization; 2013). The HIV department of the World Health Organization has consolidated various normative ways to handle HIV risks for key populations, including transgender.

The 2011 Political Declaration on HIV and AIDS called for a 50% reduction in HIV transmission among PWID by 2015. Despite new diagnoses among this group declining by 10% between 2010 (110,000) and 2013 (98,000), it is highly unlikely that the 2015 target will be met (UNODC: 2015). Reducing HIV risk among key populations will take a concerted effort on many fronts. The legal and policy environment in most countries need to change in order to accommodate the needs of the key populations. The health sector plays a major role in providing proper treatment to the persons affected with HIV and there are other agents such as the media and other awareness programmes that can go a long way in reducing the stigmas attached to the syndrome and those affected by it. Some of the key measures that can assist in the prevention, treatment and care of HIV afflicted key populations are mentioned below.

Role of the Health Sector

A WHO report (2015) on 'Tool to set and monitor targets for HIV prevention, diagnosis, treatment and care for key populations' has provided consolidated guidelines for countries for prevention and care of key populations. The report suggests some essential health sector interventions such as-

Comprehensive condom and lubricant programming; harm reduction interventions for substance use, in particular needle and syringe programmes (NSP), opioid substitution therapy (OST) and naloxone; behavioral interventions, HIV testing and counseling; prevention and management of co-infections and other co-morbidities, including viral hepatitis, TB and mental health conditions; sexual and reproductive health interventions, including contraception, diagnosis and treatment of STIs, cervical screening.

A supplementary guideline report by WHO points out the necessity of HIV prevention through consistent usage of condoms-compatible lubricants; making pre-exposure prophylaxis, post-exposure prophylaxis available to key populations. It also mentions that people who inject drugs should have access to sterile injecting equipment through needle and syringe programmes.

Additionally, a 2015 review on policy and legal environment related to HIV services in Sri Lanka supported by the Global Fund provides a comprehensive detailed review of measures that would support in eradicating the various challenges faced by the HIV infected population. 'Replicating the best practice of "packaging" HIV testing with VDRL testing for antenatal women through other health screening packages is likely to further de-stigmatize HIV testing and increase its uptake by the general public, youth and

vulnerable groups, as well as also by key population members not linked through the Global Fund strategy' (Review and Consultation of policy and legal environment in Sri Lanka, 2015). Community based HIV testing and counseling form a very important part of comprehensive prevention and care of key populations.

Computerized patient registration systems, training medical officers, establishing mechanisms to monitor periodically the levels of institutional and discrimination to reduce institutional stigma and discrimination were recognized as some of the key points that would go a long way in reducing the challenging environment for HIV patients. The report goes on to mention the important role that media can play in reducing HIV prevalence and caring for the HIV patients.

In addition to specific health sector interventions, a complementary report on consolidated guideline to HIV prevention by WHO SEARO in 2015 talks of critical enablers who play an important role in providing a supportive environment for key populations.

The critical enablers should implement and enforce anti discriminatory and protective laws derived from human rights standards, in order to eliminate stigma, discrimination and violence against people from key populations. Programmes should work toward implementing a package of interventions to **enhance community empowerment** among the key populations. Countries should focus on the supportive legislation, policy and financial commitment, including decriminalization of behaviors of key populations

Prevention strategies

A long term media strategy and a social condom marketing plan will also go a long way in transforming the conditions of TG and other population afflicted with the syndrome in the South Asian region. 'Exploiting social media approaches to target youth will enable the wide dissemination of HIV related information, establish a youth led social dialogue on social issues around HIV and facilitate information and access to commodities for protection against unintended pregnancy and STI/HIV without stigma' (Global Fund sponsored Review of Policy and Legal Environment in Sri Lanka, 2015).

Sensitization training of law enforcement officers and health sector workers will go a long way in creating a supportive environment for the key populations. The involvement of key population in national policy and strategy formulation is also imperative.

Countries in the South Asian region such as Sri Lanka have much left to be taken care of with regard to the dismal conditions of transgender populations and other HIV vulnerable key populations. The consolidated guidelines need to be put in purview of current legislative and health policies in order to make a mark in the development of the key populations.

Global Fund sponsored Review of Policy and Legal Environment in Sri Lanka (2015) recognizes strong health sector leadership, policy and practice have been pivotal in maintaining the low HIV epidemic status in Sri Lanka in the country for almost three decades. The report recommends continuing investment for delivery of quality STI services in the country. The report also recommends for the pro-active engagement of stakeholders identified by PLHIV to be responsible for providing them the basic amenities of employment, education, social welfare and housing as well as strengthening comprehensive HIV/AIDS care with the routine availability of psychosocial counseling for PLHIV and their family members. The benefit of psychosocial counseling to the LGBT community and their families is also recognized. It's recommended that an independent Sub-committee for the Community (PLHIV, Key Populations, LGBT) at the National AIDS Committee would empower them through increasing their visibility and recognition as a stakeholder in the national HIV prevention response and strengthen them to advocate for their rights, including decriminalization. The National STD/AIDS Control Programme (NSACP) needs to facilitate stakeholders to take ownership of HIV prevention activities in their own domains by building their technical capacity, defining their roles and responsibilities within the national HIV prevention response, providing regular updates on the emerging trends and their implications, and advocating sectoral partners to dedicate their own funds for prevention activities.

The need of customizing HIV prevention interventions to respond to the unique needs of each key population group like transgender communities as well as monitoring and evaluation of effectiveness of interventions with scaling up mobile STI/HIV services in cities and locations frequented by MSM, FSW, transgender community to achieve the targeted coverage of Key population groups.

Above report rightly recognizes the strengthening of the quality of strategic information for evidence based programme planning, implementation and monitoring. This requires disaggregated data on persons of diverse sexual orientation and gender identity, insights into behaviours/practices of key populations and vulnerable groups and timely data returns from the private health sector institutions on HIV sero-positivity. The evidence base for national HIV Prevention programming needs to be further strengthened with in-depth data on the transgender communities.

Strategies from Human Rights Perspectives

World Health Organization (WHO) notes that sexual rights uphold human rights as stated in national laws, international human rights documents and other consensus documents and include rights of all persons, free of coercion, discrimination and violence, to the highest attainable standard of health in relation to sexuality, including access to sexual and reproductive healthcare services. (WMC: 2015). 'UNAIDS report says that in 2011, more than 370,000 Asians/Pacific Islanders were newly infected with HIV, bringing the total number living with HIV/AIDS in the Asia and the Pacific to nearly 5 million. In the

same year, approximately 310,000 people died from AIDS-related illnesses in this region. The same report recognizes that ‘though epidemics in Cambodia, India, Malaysia, Myanmar, Nepal, Papua New Guinea, and Thailand declined by 25 percent between 2001 and 2011, those in Indonesia, the Philippines, Bangladesh, and Sri Lanka rose by more than 25 percent in the same period. Therefore, Sri Lanka has a reason to be concerned’ (Review and Consultation of Policy and Legal environment in Sri Lanka). Punitive laws focused on key populations at higher risk of HIV remain obstacles to effective HIV prevention and care for the vulnerable populations. A UN report states that the HIV epidemic spread in South Asia by the 1990s. In 2015, 76 countries still had laws that prohibit same-sex sexual activity, affect transgender people, hindering their ability to access information about HIV risk and prevention. (ILGA: 2015) Rather than providing protection to key HIV-affected populations (those most vulnerable to HIV, such as sex workers, MSM, transgender people, prisoners and migrants), many governments enact laws or permit behaviors that contravene international human rights standards, such as criminalizing same-sex activity, enforcing laws that prohibit gender nonconformity and criminalizing sex work’ (UNDP: 2013). Such difficult conditions for sexual minorities like transgender require concerted efforts by various agencies for the development of the marginalized sections of the society.

The political and legal environments of most of the countries in South Asian region remain hostile towards the sexual minority population and the populations suffering from HIV. The repressive laws fail to fulfill the human rights of the vulnerable section of population. The laws affecting transgender persons need to be discussed in the light of the history of laws, their utilization against transgender persons as well as the attitudes of law enforcement officers, lawyers and society (Chandimal, 2015). A comprehensive report on the policy and legal environment related to HIV in South Asia and particularly Sri Lanka was published in November 2015 as part of the Global-Fund Multi-Country South Asia Global Fund HIV Programme. The report reviews relevant laws and policies in the South Asian region which reveals the HIV situation and related human rights environment for key population in this region. The report brings to the fore various international ratifications and ventures that have been created in order to deal with the situation of the key populations.

While the International Bill of Human Rights and the United Nations Charter lay down some general principles with regard to attaining a peaceful and supportive environment for all persons, the Yogyakarta Principles address international human rights standards and the issues related to sexual orientation and gender identity. It is intended to apply international human rights law standards to address the abuse of the human rights of lesbian, gay, bisexual and transgender (LGBT) people, and (briefly) intersex people. Referring to a principle articulated in the international human rights laws, the Yogyakarta Principles were developed to enhance the individual sovereignty of subjective identity in order to protect the authentic reality of individual identity and sovereignty from the legal

fictions and social constructs of national or state collectivist ideologies. (Human Rights Watch: 2007)

The policy brief of the UNDP and APCOM Report identifies India and Nepal as the only countries in the South Asian Region that have somewhat provided a legal platform to the oppressed groups. Recent court judgments in India, Nepal and Pakistan place an emphasis on the role of the law in assuring equality, human dignity and inclusiveness. Some legal measures have been taken to recognize diversity of gender identities in Nepal and India, for example in allowing electoral registration as a third sex. These events signal a trend towards a more protective legal environment. These improvements in the legal status of MSM and transgender people will support efforts to scale up HIV responses. In Afghanistan, Bangladesh, Bhutan, Sri Lanka and Maldives the legal environment remains to a large extent repressive, although there are significant variations between these countries in relation to the extent to which punitive laws are actually enforced (UNDP & APCOM Policy Brief, 2010)

Nepal has looked significantly ahead compared to other countries in the region. In 2007 it declared homosexuality and third gender as legal, **Bangladesh** and **India** have begun the path towards a more inclusive and supportive environment for the key populations. The ruling rested largely on the freshly minted Yogyakarta Principles, and helped activists to successfully advocate the inclusion of third gender voter rolls (2010), the federal census (2011), citizenship documents (2013), and passports (2015). Further, sexual orientation and gender identity issues were included in school level curricula and the National Human Rights Commission institutionalized a position of Human Rights Officer dealing with MSM/transgender complaints.

Bangladesh officially recognized ‘Hijras’ and has extended several state benefits including education, housing and health benefits.

India’s Supreme Court for the first time recognized a third gender category, giving transgender individuals formal recognition, legal status, and protection under the law in 2014. The Court also directed India’s federal and state governments to designate transgender people as constituting a legally recognized marginalized group – which offers them access to social welfare programs and affirmative action in university admissions and state employment. This year also marked the first time transgender persons in India were able to choose their identity as “other” on their voter identification card, in accordance with an Indian Election Commission decision. For India’s ongoing general election, over 28,000 voters enrolled under this category. The acceptance of six transgender women as cadets in India’s Home Guards in 2014 stands out as progress for the entire community in its ability to choose professions. The transgender cadets will train with a male unit, but are being provided separate changing facilities and allowed to dress as they like when not training. (Transgender Rights: Progress in South Asia 2014)

Pakistan recently passed an HIV & AIDS Prevention and Treatment Act in 2007, and has in

place a number of laws related to the HIV treatment. Pakistan's transgender community was granted the right to vote in a 2011 Supreme Court decision that was first implemented in 2012, and several transgender candidates ran in Pakistan's 2013 general election.

'A new report jointly released by the United Nations Development Programme (UNDP), the UN Country Team and the National AIDS Control Programme of Pakistan, calls for adoption and revision of laws and policies to create a more effective national HIV response that will mitigate the impact of HIV and promote and protect the human rights of key populations and vulnerable groups and also the recognition of a separate gender for Pakistan's 'Hijra' community, which includes transgendered people, transvestites, and eunuchs. It is also recommends that people are allowed to identify as 'hijras' when registering for a national identity card.' (Global Fund sponsored Review of Policy and Legal Environment in Sri Lanka, 2015)

A regional assessment of the laws and policies reveal the presence of a significant number of laws that look into issues of violence and discrimination, but most often these laws do not specifically mention sexual minority groups or key population. India, Pakistan, Bangladesh all mention women and children in their policies specifically, with special focus on domestic violence and sexual discriminations.

HIV related laws are mentioned in India, Pakistan and Bangladesh among other South Asian countries.

India: HIV/ AIDS Bill (2007); HIV sensitive policy (2011); Legal provisions in Immoral Trafficking Prevention Act (1986); Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Bill (2010); National Policy on HIV/AIDS and the World of Work Policy; Legal provisions in Indian Medical Council Act (1956); Professional Conduct & Ethics Regulations (2002); National AIDS Control Organization (NACO); National Health Mission (NHM) Merger.

Pakistan -The HIV & AIDS Prevention and Treatment Act (2007); The Sindh HIV and AIDS Control, Treatment and Protection Bill (2013); Voluntary Counseling and Testing (VCT).

Bangladesh -National HIV and AIDS Policy

Nepal -National HIV/AIDS Strategy (2002); (2006); HIV & AIDS Action Plans (NAP 2006 (2008); and NAP 2008 (2011)

Sri Lanka continues to have no laws specific to HIV.

The legal environment in these countries is not conducive to the free and supportive living of key populations and sexual minority population. The review of the Legal and Policy environment in Sri Lanka published in November 2015 provides detailed recommendations of interventions within the legal environment that can be

extrapolated to many other countries in the South Asian region. The review points out the lack of a specific AIDS related law in Sri Lanka, as well as poor enforcement of human rights, which require stronger advocacy mechanisms.

The Human Rights condition of LGBT persons in Sri Lanka continues to be unsupportive and criminalized, though there are some ongoing policy reform efforts to better situation of LGBT communities. Continued efforts to decriminalize homosexuality include nondiscrimination on the basis of sexual orientation in the Constitutional reform of Sri Lanka. A recent review by the United Nations Committee on widely prevalent discrimination against LGBT persons in Sri Lanka was addressed in Geneva, 2014. The Sri Lankan government reiterated “Article 12.1 ensures equality for sexual orientation and gender identity” and that under Article 12.2 “laws discriminating on the grounds of sexual orientation and gender identity are unconstitutional.” However, she specified, “Sections 365 and 365A [of Sri Lanka’s Penal Code] do not target any particular group but are there to protect public morality. These provisions commonly known as anti-sodomy laws criminalize “unnatural” sex and “acts of gross indecency” including homosexuality and lesbianism. (‘Sri Lankan Government says LGBT rights are constitutionally protected’ 2014).

Women and Media Collective Report of 2014 reports the complex intersection of the vulnerabilities and invisibilities of LGBT persons and sexual minorities in general in Sri Lanka. A Human Rights Watch report was released in August 2016 named ‘All Five Fingers are not the same: Discrimination on the Grounds of Gender Identity and Sexual Orientation in Sri Lanka’ based on interviews conducted in four cities between October 2015 and January 2016 with 61 LGBTI people brought out the on abuses experienced by transgender people—including arbitrary detention, mistreatment, and discrimination accessing health care, employment, and housing. (A push to decriminalize Homosexuality, 2016) This report presents a overall picture of the current human rights scenario of Sri Lanka and their key findings include:

1. **Gender Recognition:** Transgender persons in Sri Lanka are denied the right to recognition by the State due to the fact that there is no structured system which allows transgender men or women to alter the category of ‘sex’ on their Birth Certificate or National Identity Card. The absence of legal provisions to change sex proves to be risky for both the medical practitioner and the individuals themselves (NGO Shadow Report, 2011).
2. **Criminalization and Lack of Protection Against Discrimination:** Vague and archaic laws are the loopholes for continued discrimination against LGBT persons in Sri Lanka.
3. **Sexual and Physical Abuse from the Police:** Reports such as the Human Rights Watch (2016) and a 2014 report by the Kaleidoscope Trust, in

collaboration with the Sri Lankan LGBTI human rights group, Equal Ground document the harassment faced by LGBT persons from police. The police have subjected them to extortion of money and or sexual favors, and also violently assaulted them on numerous occasions. ‘The transgender **nachchi** community is especially vulnerable to such victimization, abuse and exploitation The awareness that most LGBTI individuals will be unwilling and fearful to report such incidents and the subsequent lack of action by the State gives police officers the license to continue such practices’ (Kaleidoscope Trust Report: 2014)

4. Barriers to HIV Prevention: As the existence of transgendered persons in Sri Lankan society is not taken into consideration in designing healthcare, there is a lack of information on services such as sex reassignment operations by public health providers. In Sri Lanka, health services are provided by public hospitals free of charge or at subsidized rates. However, services on sex reassignment are not made available in these hospitals (On Universal Access to Sexual and Reproductive Rights: 2015)

5. Discrimination in Employment and Housing: Transgender persons face discrimination in employment and housing on the grounds of actual or perceived gender identity or sexual orientation.

All available data and studies call for a more comprehensive and delicate handling of HIV related issue among vulnerable groups. This calls for governments adopting national HIV strategies that support advocacy and improvements to the enabling legal environment in line with best practices in HIV prevention, treatment, and care guidance documents developed by UNAIDS, WHO and other global strategies developed by global funding mechanisms such as the GFATM (SOGI Strategy) and according to publications by the World Bank, WHO, and others. (Baral S. et al, 2011) The recommendations in Sri Lanka takes into account different factors, for example the need for discussing issues in local languages at the grass root levels are seen as means of influencing governmental and institutional structures for LGBTIQ population. On more than one instance it has been researched and found that it is the *cultural construction* of homosexuality and other ‘trans’ populations that contributes towards the manifestation of abuse in Sri Lanka and other SEARO countries. The oppression within a vacuum of only genes or sexual orientation is too simplistic, and the experience of oppression is distinct under each category of ‘trans’ people, all of which need to studied in greater detail and handled more delicately (Nichlos, 2010). The doing away of criminalizing non-conformist gender orientations is crucial to the progress of the human rights of TG communities. It will help transgender people to leave behind a life of marginalization and enjoy a life of dignity. A simple shift toward allowing people autonomy to determine how their gender is expressed and recorded is gaining momentum. (Human Rights Watch 2016) A paradigm

shift of Legal rights and social conventions only will uplift the Transgender population and make it a part of the mainstream society.

Exposure visits for community-based organizations from Afghanistan, Bhutan, India, Nepal and Pakistan with their peers have increased knowledge sharing on organizational governance and advocacy strategies. After a visit to Nepal, MSM and transgender people have **formed the first Bhutanese MSM and transgender community group** (UNDP, 2016).

Policy and Legal Environment: Review and Recommendations

Global Fund sponsored Review of Policy and Legal Environment in Sri Lanka (2015) stated that Sri Lanka has a window of opportunity to reap the full benefit of the GOSL commitment to provide ARV from 2016 and prevent escalation of the HIV epidemic. However, this requires addressing the constitutional, legal, policy and societal barriers as well as stigma and discrimination in healthcare settings, which are impediments to achieving coverage and retention within services of PLHIV, and key population groups among whom the epidemic pattern appears to be changing.

The report reconfirms that there is no HIV specific law in Sri Lanka. The current Constitution of Sri Lanka does not recognize the right to life, right to health, right to privacy or right of patients. The review has drawn attention to the contention of some studies, which imply that the Sri Lankan Constitution lacks specific anti-discrimination language related to sexual orientation, gender identity and gender expression.

Lack of recognition of 'gender' and 'gender identity and orientation' in the Constitution has an immense impact on the members of LGBT community. Needless to state this places them at a severe disadvantage in accessing rights, protections and legal guarantees ensured by various international instruments. Above study reinstates that recognizing LGBT community as one group of persons having greater risk of contracting HIV AIDS and therefore the need for recognizing and protection of their rights is considered a mandatory issue in regard to preventing spread of HIV AIDS. It was reviewed that punitive laws focused on key populations at higher risk of HIV remain common obstacles to effective HIV prevention, treatment, care and support services for key populations and vulnerable groups, at present. The transgender are subjected to inhumane treatment, stigmatization and discrimination by the law enforcement officers, hospital staff, educational institutions and work places and these were also considered matters to be emphasized in the review. (Global Funded sponsored Review, 2015)

2. Transgender Persons and the Law in Sri Lanka

Sri Lankan law has not purposefully discriminated transgender persons, yet, due to not having special clauses for protection of rights of transgender persons and due to misinterpretation in application of law, transgender persons have faced issues related to equality before the law as well as gender based violence. In recent times, policy makers have given considerable attention towards the rights of transgender persons. Milestone achievement this year include, introducing a clear pathway to change sex in official documentation and Human Rights Commission initiating a sub-committee on ‘LGBTI Rights.’

This chapter looks at the relationship between transgender persons and the law in Sri Lanka. It looks into how law could be interpreted to protect the rights of transgender persons in relation to non-discrimination, equality before the law and gender based violence and what laws and policies are interpreted and applied to discriminate and victimize transgender persons. The chapter also presents the new developments in protecting transgender persons.

Non Discrimination and Equality

Non-discrimination and equality before the law are two fundamental human rights protected from the Constitution of Sri Lanka.⁴ Although Sri Lanka has guaranteed formal equality, there is issues related to protecting substantive equality.⁵ Due to internalized ‘normal’ identity, when a person does not belong to the norm, they are not treated equally.⁶ Transgender persons feel they are not adequately protected and faces discrimination in access to resources, access to education, health services, employment, relationships, legal services and other public services and facilities. Some examples include, what public toilet to be used, whether they belong to the male or female ward in hospitals, issues in school admission if it is a girls only or a boys only school, difficulties they face in immigration on arrivals and departures due to gender mentioned in their passport is not their real gender, difficulties in gaining admission to schools, Universities and employment due to not being able to change their gender in official documentation and discriminatory treatment by Police when they are in public spheres.⁷ While there are no specific legislation to protect transgender persons from discrimination they face in their daily lives, the interpretation and application of following legal instruments can further discriminate or limit the scope of rights of transgender persons.

⁴*Constitution, 1978, a 12. (SL)*

⁵ This statement is based on the interview with Interview with Ambika Satkunanathan, 19 October 2016. Substantive equality is fair equality of opportunity. Bevir(2010). It deals with indirect discrimination. Laubeová(2000)

⁶ Interview with Kamani Jinadasa. 10 October 2016.

⁷ Based on interviews with Ambika Satkunanathan (19 October 2016), Jayan Abeywickrema (18 October 2016), Kamani Jinadasa (10 October 2016) and Dhanushka Rajarathnam (20 October 2016).

- *The Constitution of the Democratic Socialist Republic of Sri Lanka 1978 (SL)*
- *Penal Code 1885, Section 399*
- *The Vagrants Ordinance, No 4 of 1841*
- *Penal Code (Amendment) Act No 22 of 1995, Section 365*

Constitution of Sri Lanka

Provisions of non-discrimination⁸ and equality⁹ are highlighted in the Sri Lankan Constitution. Article 12.2 states ‘no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.’ This Article does not explicitly state non-discrimination based on sexual orientation and gender identity. This issue has been pointed out in the Human Rights Watch report¹⁰ as well as the International Gay and Lesbian Human Rights Commission (IGLHRC)’s report to the Human Rights Committee.¹¹ The need to incorporate sexual orientation and gender identity in the new Constitution in order to ensure transgender persons right to non-discrimination and equality before the law are explicitly recognized. The Human Rights Commission has made the recommendation to Parliament Select Committee on Fundamental Rights and Public Representation Committee.¹²

Penal Code, Section 399 - ‘Cheating by Personation’

According to DIG Police, Section 399 of the Penal Code is the only area of law transgender person becomes a victim of law due to gender identity.¹³ There has been few arrest by Police as the gender of the person is not what is represented in their National Identity Card. This is a nonbailable offence. Kulatunge argues, this law had led to ‘arbitrary arrest and detention of transgender persons for their peculiar gender expressions and disguised sexual identities.’¹⁴ Several cases where women were discovered to be disguised as men have been brought to court under the charges of cheating by personation and the ‘true’ sexual identity has been exposed to the public.¹⁵ To avoid transgender persons being victims of this law, it is important to sensitise the law enforcement officials on transgender identities. Police has already started sensitisation

⁸*Constitution (1978) a. 12.2 (SL)*, No person shall be discriminated against on the ground of religion, language, caste, sex, political opinion, place of birth or any such grounds.

⁹*Constitution (1978), a. 12.1 (SL)*, All persons are equal before the law.

¹⁰Human Rights Watch (HRW) report states although the Constitution states non-discrimination and equality before the law, there are no specific law in Sri Lanka that provides protection from discrimination on the basis of gender identity and sexual orientation. HRW (2016) p. 52.

¹¹IGLHRC has noted not having specific anti-discriminatory language on sexual orientation and gender identity has caused disadvantage for LGBT people in accessing rights, protection and legal guarantees.

¹² Interview with Ambika Satkunanathan (19 October 2016).

¹³ According to DIG Ajith Rohana, all the other offences to which transgender persons are vulnerable are associated with other offences and not merely the gender identity. Interview with DIG Ajith Rohana (24 November 2016)

¹⁴ Kulatunge (2016)

¹⁵ IGLHRC (2014) p.3.

programs on 'transgender' and believes with awareness, number of arrest due to ignorance of the identity status of transgender persons will reduce.

This law is also applied in divorce cases with transgender persons. In such cases it is necessary for the partner to establish he/she had no clue of the gender identity of the spouse before getting married. It is necessary to create awareness among transsexuals and transgender persons to disclose their gender status before getting into a marital relationship. By exposing their gender status to the partner and family transsexuals and transgender persons is getting married to, they can avoid facing discrimination and public humiliation under this law.

The Vagrants Ordinance, No 4 of 1841

The vagrancy ordinance was first enacted in 1841, prior to the introduction of section 365 of the penal code. It criminalizes street sex work including same-sex sexual intercourse, at public places. Vagrants ordinance could be used to arrest sex workers (common prostitute), beggars, cross-dressers on streets, public protesters, poor unemployed and homeless persons. It has clearly a class dimension and a colonial dimension, where colonial rulers expected to keep the cities clean and their neighbourhoods free from poor, homeless persons, beggars, homosexuals and riots, and protests.

The term 'gross indecency' which later included in the section 365 A of the penal code in 1883 was first included in the Vagrants Ordinance:

...Any person found committing any act of gross indecency, or found behaving with gross indecency, in or about any public place,

... shall be guilty of an offence and shall be liable on summary conviction to imprisonment of either description for a period not exceeding six months, or to a fine not exceeding one hundred rupees, or to both.¹⁶

As mentioned above, this law only applies to sexual acts at public spaces. It also criminalizes 'soliciting any person for the purpose of commission of any act of sexual intercourse and indecency.' The term 'gross indecency' has not been defined. Such terms lead to misinterpretation of the law. Under this law, persons have been arrested for just carrying condoms in their bags.¹⁷ In *Dharmadasa vs Thiadoman* 56 NLR 278, the court gives a very wide interpretation for the word 'soliciting' stating that it is not required to solicit willingly or forcibly and even an indirect solicitation is sufficient for the commission of an offence. Even when an invitation was made to have sex at a public place expressly, or if it is implied, the legal ingredients are fulfilled. In *Leembruggen vs Silva* 34 NLR 56, the court held that illicit sexual intercourse is subjected to indecency.¹⁸ The vague

¹⁶*Vagrants Ordinance, s 7 (1)*.

¹⁷Interview with Dhanushka Rajarathnam, 20 October 2016.

¹⁸ Rohana, Gallage, Halangoda and Karunaratna, 2011.

interpretation of ‘gross indecency’ and ‘soliciting for illicit sexual intercourse’ has made transgender persons more vulnerable to police abuses.

Penal Code (Amendment) Act No 22 of 1995, Section 365 – ‘Unnatural Offence’

This law to criminalize homosexuality was introduced by the British colonial rule in 1883.¹⁹ At the time, law criminalized homosexual activities between men. In 1995, in an attempt to develop gender neutral language for perpetrators of sexual offences, criminalised same-sex acts between women for the first time.²⁰ Though the government originally proposed to decriminalize homosexuality, in an ironic effort to be more inclusive and gender-neutral,²¹ existing criminalization of lesbians, gays and transsexuals were further strengthened. This resulted in further victimization of homosexuals including transgender persons.

Section 365 of the Penal Code criminalises sexual offences including rape, abortion, sexual harassment and unnatural offences. Unnatural offences termed as ‘carnal intercourse against the order of nature’ include homosexual acts. Section 365 has described carnal intercourse and the term of punishment as follows:

Section 365 ... whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be punished with a fine and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for injuries caused to such person.²²

Explanation: penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.²³

Another significant characteristic of this law is the explanation given above. Because of the explanation given, it was needed to prove either act of anal or oral penetrative sex had happened. Subsequently under this law, only few had been punished due to the technical difficulties in proving the act of sex which often happens in private spheres. Further it was technically believed that penetration was not possible between women. Hence the section 365 was not used to criminalize lesbian sex acts.

¹⁹Gujarat (2004).

²⁰Women’s Support Group(2014) p. 21.

²¹Colombo Gazette(2015).

²²*Penal Code, s 365*

²³*Penal Code, s 365*

Section 365A, of the Penal Code further defines homosexual acts as, ‘acts of gross indecency between persons.’ Acts of gross indecency and the punishments given are described as follows:

Section 365 A: Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be guilty of an offence, and shall be punished with imprisonment of either the description for a term which may extend to two years or with fine or with both and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for injuries caused to such person.²⁴

The elements that are necessary to establish an act of gross indecency have not been defined by the Penal Code and it has caused ambiguity and confusion.²⁵

There have been very limited prosecutions for homosexuality. In May 2001 it was reported; since 1950 there had been no prosecutions for homosexuality in Sri Lanka under section 365 or 365 A of the penal code.²⁶ However, Fernando argues, Section 365A of the Penal code has been enforced often in recent time due to rise in sex tourism in Sri Lanka and as a result there is a rise in conviction of male homosexual sex workers.²⁷ Several newspapers in the last decade has also reported arrests which have happened under the charges of ‘gross indecency’ including consensual same-sex acts between adults.²⁸ Yet there are no published statistics of number of arrests of transgender persons under Section 365 of the Penal code.

Sexual and Gender Based Violence

Transgender persons in Sri Lanka faces range of abuses and violence in their daily lives²⁹ in home, places of education, public spaces, places of employment, financial institutions and accessing health care.³⁰ In this section, following legislation on protecting sexual and gender based violence including sexual harassment, rape, domestic violence and sexual

²⁴Penal Code, s 365 A.

²⁵ Fernando argues this provision ‘can be interpreted in a manner that could make any adult committing a consensual act, even in a private space, guilty of an offence.’ Fernando (2015).

²⁶ Reuters(2001).

²⁷Fernando(2002).

²⁸For example, Daily Mirror(16th November 2012) report on arresting two men for homosexual acts in a public lavatory. Daily Mirror (17th June 2014) report on arresting two men for having gross indecency in a swan boat.

²⁹HRW (2016).

³⁰IGLHRC (2014) p.1.

and gender based violence in educational institutions in Sri Lanka is analysed to present the applicability to transgender persons in Sri Lanka,

- *Penal Code (Amendment) Act, No. 22 of 1995, Section 345 (sexual harassment)*
- *Penal Code (Amendment) Act, No. 22 of 1995, Section 363(rape)*
- *Prevention of Domestic Violence Act, No 34 of 2005.*
- *Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act, No. 20 of 1998*

Penal Code (Amendment) Act, No. 22 of 1995, Section 345

According to Section 345 of the Penal Code (Amendment) Act, sexual harassment is criminally punishable. Sexual harassment is defined as,

Whoever, by assault or use of criminal force, sexually harasses another person, or by use of words or actions, causes sexual annoyance or harassment to such other person commits the offence of sexual harassment and shall on conviction be punished with imprisonment of either description for a term which may extend to five years or with fine or with both and may also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person.³¹

Protection against sexual harassment in work place is given as,

Unwholesome sexual advances by words or action used by a person in authority, in a working place or any other place, shall constitute the offence of sexual harassment.³²

Wording used here is gender neutral and can be used to address sexual harassment faced by transgender persons as well.

Penal Code (Amendment) Act, No. 22 of 1995, Section 363

According to Section 363 of the Penal Code (Amendment) Act, 'A man who has sexual intercourse with a woman' under five specific scenarios can be guilty of rape.³³ This act does not criminalise rape in a same sex relationship or rape committed by a woman to a man.

³¹*Penal Code, s345.*

³²*Penal Code, s345, e 1.*

³³ For the five specific scenarios that constitute rape see *Penal Code (Amendment) Act, No. 22 of 1995, s 363.*

Prevention of Domestic Violence Act, No 34 of 2005

Cohabiting partners can seek redress for domestic violence through the Section 23 of the Domestic Violence Act. Although this Act protect Sri Lankan citizens from domestic violence, transgender persons who seems to be in a same-sex relationship can be penalised by the Police as a criminal offence under Section 365A of the Penal Code. As a result seeking redress of domestic violence faced by transgender persons through the prevention of Domestic Violence Act is not seen as an option.³⁴

Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act, No. 20 of 1998

This Act prohibits ragging and sexual harassment in educational institutions. ‘Ragging’ and ‘Sexual Harassment’ are interpreted in this Act as,

‘Ragging’ means any act which causes or is likely to cause physical or psychological injury or mental pain or fear to a student or a member of the staff or an educational institution.³⁵

‘Sexual Harassment’ means the use of criminal force, words or actions to cause sexual annoyance or harassment to a student or a member of the staff, of an educational institution. ³⁶

Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act can be applied by transgender persons in educational institutions to seek redress against ragging and sexual harassment.

New Developments in Protecting Transgender Persons

Current Government seems more interested and open to promote and protect the rights of LGBTIQ. ³⁷ Some of the Government interventions include, considering recommendations to guarantee the basic human rights of LGBT community in the proposed Constitution and setting up procedures for legal gender recognition.

In 2016, A 20 member Public Representations Committee (PRC) on Constitutional Reforms was appointed by the Prime Minister for the purpose of obtaining proposals from the public for the proposed constitutional reforms. The civil society was asked to make written and oral submissions to the committee at public sittings conducted around Sri Lanka. The report submitted by LGBT community to the Public Representation Committee on Constitutional reforms argues LGBT community need equal rights for protection under the law and the right to non-discrimination. The recent report on Public Representations on Constitutional Reforms has captured the Rights of people with

³⁴ Women’s Support Group, 2014, p. 21

³⁵*Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act, s 17.*

³⁶*Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act, s 17.*

³⁷Chandimal, D. (2016) and Bardswich, K. (2016).

diverse sexual orientations and gender identities.³⁸ Here it is argued that practices including prejudices, negative stereotypes and discrimination are entrenched in the value system and patterns of behaviour while sexual orientation is a new concept in human rights law and as a consequence basic human rights are denied either by practice or the law. The report state the new Constitution should ensure guaranteeing the basic human rights of LGBT community.³⁹

The National Human Rights Commission of Sri Lanka and Ministry of Health together with Register General's Department have succeed in passing a circular and implementing the new circular on changing gender in official certificates issued by the Register General's Department. At the moment only the birth certificate can be changed. In order to change the gender in birth certificates it is necessary to obtain a 'gender recognition certificate.' In this respect, Ministry of Health has released a circular setting out guidance on issuing the gender recognition certificate to health services and educational institutions in June 2016. As per the newly implemented procedure for the gender recognition certificate, to obtain this certificate, one has to be evaluated by a Consultant Psychiatrist in any Government hospital. In addition, Director of the Mental Health Unit of the hospital also has to sign. It is important to follow the medical clearance process laid out in order to avoid dangerous situations if any person is allowed to change gender only with self-disclosure.⁴⁰ Currently in Sri Lanka, Gender recognition certificate is granted only to transgender persons that have completed the transition. According to best practices of the world, it is not required to complete transition. In most of the countries, if the person is 18+ and have decided they want to live rest of the life in the gender they were not identified at birth, they can obtain the gender recognition certificate.⁴¹

Human Rights Commission has setup thematic sub-committees. One of the thematic sub-committee is 'LGBTI Rights.'⁴² Membership of the thematic sub-committee is with civil society organizations working on LGBTI issues. Members of the civil society and Human Rights Commission are working together in identifying rights issues of the LGBTI community. The first meeting was held about 2 weeks ago. At this meeting it was discussed what needs to be done as a group. The group has discussed the need to review all existing laws that discriminate transgender persons.

³⁸ Public Representation Committee on Constitutional Reforms (2016) p 112.

³⁹ Public Representation Committee on Constitutional Reforms (2016) p 113.

⁴⁰ HRW (2016) p.7 argues for gender recognition procedures only through self-disclosure. Considering the possibilities of unwanted incidents and crime that could occur if anyone is allowed to change gender through self-disclosure, it is recommended to allow change of gender in official records only through clearance of medical authorities.

⁴¹ Interview with Dhanushka Rajarathnam, 20 October 2016.

⁴² Interview with Ambika Satkunanathan, 19 October 2016.

The recent fundamental rights case on education, *De Zoysa Vs. Ministry of Education and Eight Others*⁴³ where child in Kuliypitiya was denied access to school due to allegations of HIV and under the Right to Universal Access to Education, judgment was given that every child should have equal access to schools. This case gives a pathway to push for providing equal access to education for every child.

Ministry of Labour and Labour Relations Policy on HIV and AIDS in the World of Work in Sri Lanka, adopted based on ILO Code of Practice on HIV/ AIDS in the world of work promotes 'supportive working environments without stigma and discrimination for workers and their families.'⁴⁴ Similar policy can be adopted to protect transgender persons from discrimination at workplace.⁴⁵

A private sector initiative in recognising sexual orientation and gender identity is the John Keells Holdings policy on Gender. As part of their policy John Keells Holdings has introduced open workplace for anyone regardless of sexual orientation and gender identity. They also hold programmes to sensitise all their staff on inclusiveness.⁴⁶

⁴³ SCFR 77 of 16.

⁴⁴ Ministry of Labour and Labour Relations (2010), p. 6. Objective 2.

⁴⁵ Interview with Kamani Jinadasa, 10 October 2016.

⁴⁶ Equal Grounds is supporting John Keells Holdings in conducting sensitisation programs. Interview with Dhanushka Rajarathnam, 20 October 2016.

3. Background and Objectives

About the study

Assessment of Transgender Persons (RSAT) in Sri Lanka intends to determine how well Sri Lanka has achieved the provision of universal access to appropriate HIV prevention, care, treatment and support for transgender people. It analyzes human rights situation for transgender persons; develop an evidence base on transgender people and HIV and to identify opportunities to strengthen capacity in providing broader and better responses for transgender people in relation to prevention, control, treatment and care of HIV/AIDS.

This study is funded by the Global Fund for AIDS, Malaria and Tuberculosis (GFAMT) through its local partner, Family Planning Association of Sri Lanka. The Family Planning Association of Sri Lanka (FPA Sri Lanka), the Principle Recipient 2 (PR2) of the Global Fund around 9 Projects, the pioneer in family planning and reproductive health education and services, is an accredited member of the International Planned Parenthood Federation (IPPF) in the United Kingdom. In its role as the PR2, Family Planning Association of Sri Lanka (FPA) intended to carry out a “Rapid Situation Assessment of Transgender Persons in Sri Lanka”.

This research critically analyzes existing laws, policies and human rights issues affecting transgender persons. It will attempt to identify both opportunities and gaps in policies and laws which may limit or provide opportunities with regards to the access to health services for transgender persons in relation to prevention and control of HIV

Context

Sri Lanka is one of the four countries in the Asia Pacific Region that has shown up to a 25% increase in new HIV infections in the period of 2001-2011. According to NSACP, the increasing number of new cases diagnosed each year is likely to be the result of increased case detection through intensified awareness and HIV testing rather than an actual increase in HIV incidence.

People with marginalized sexual or gender identities or behaviors sometimes lack the ability or knowledge to protect themselves from infection, due to structural factors including self-stigmatization, discrimination and lack of access to information and services. This burden of being subjected to HIV makes **transgender** a key population in need of HIV prevention, treatment and surveillance.

In the context of Sri Lanka the transgender population is not estimated. Even internationally, estimation of transgender population remains inconsistent, as most of the data is only available in case of transsexuals who sought gender reassignment process, and derived from the data in gender clinics. In the Netherlands 1 in 11,000 (.009%) persons are MTof (Male to Female), and 1 in 30,400 (.0032%) are FTM (Female To

Male)(van Kesteren et al. 1996). In Singapore 1 in 2,900 (.034%) MTFs and 1 in 8,300 (.012%) FTMs. In Belgium 1 in 12,900 (.0077%) MTFs and 1 in 33,800 (.0029%) FTMs (Winter et al. 2009). In U.S., 1 in 500 (0.2%) ratio comes closest to the estimate as provided by the U.S.-based National Transgender Advocacy Coalition (Meier and Labuski. 2013).The American Psychiatric Association, using Gender Identification Disorder (GID) criteria, suggested that MTFs had a 1 in 30,000 (.0077%) prevalence rate, while FTMs were 1 in 100,000 (.0029%) (APA 2000).In countries like Sri Lanka, transgender population is further low, as many transgender persons do not come out with their identities due to wide spread transphobia and criminalization of same-sex sexual acts, other transphobic laws, and lack of legal and constitutional protection provided to transgender persons.

Epidemiological data generally reflects the failure to respond adequately, to the public health needs of MSM and transgender people. Transgender people in particular trans women, are known to have a greater susceptibility towards getting infected with HIV as unprotected receptive anal sex poses a much higher risk. In Asia and in the Pacific, trans people face significant barriers in exercising their human rights, including their right to health. The level of social exclusion they experience demonstrates the compounding impacts of exclusion from family, schools, and broader social and cultural participation; from employment and the right to an adequate standard of living; and from full recognition as equal citizens (UNDP, 2015).

Epidemiological studies among transgender people have found an HIV prevalence ranging from 8% to 68%, and HIV incidence from 3.4 to 7.8 per 100 person-years. Data presented at the 2008 International AIDS Conference in Mexico showed HIV prevalence of over 25% among transgender people in three Latin American countries and prevalence ranging from 10% to 42% in five Asian countries. A recent global meta-analysis of HIV prevalence among transgender women documented 19.1% HIV prevalence among 11,066 transgender women across 15 countries, with the odds ratio of HIV infection among transgender women compared to the general population being 48.8. These glaring data only provides more incentive to develop better knowledge about the conditions, values, preferences and circumstances of the key populations. This has led to greater consolidation for this cause in United Nations and WHO in the recent years.

The “blueprint” report sets out four human rights priorities for transgender people in the region: *freedom from violence, freedom from stigma and discrimination, the right to the highest attainable standard of health care, and legal gender recognition* (the ability to change your identity documents to reflect preferred gender). These basic demands stand in stark contrast to the experiences of many transgender people in the region⁴⁷.

A lack of transgender-specific information is one of the major barriers to accessing HIV and transgender-health related information. Some studies highlight the conflation of

⁴⁷ Human Rights Watch: 2015: Dispatches: A Blueprint for Transgender Rights in Asia

transgender issues with other Lesbian, Gay and Bisexual (LGB) issues – and in particular with MSM issues – has been found as frustrating by the transgender community.

However the term transgender is an umbrella term which includes various groups including cross dressers, transsexuals, “nachchis”(Sri Lanka), gender non-confirming persons etc, and some transgender persons experience a fluidity of identities. In Sri Lanka, the term ‘Nachchi’ is used by transgender community similar to Hijras in India, especially to recognize the Male to Female Transgenders. Given the term’s historical link with transgender sex worker community, it is not an encompassing term at least for all MTF transgender persons in Sri Lanka. It needs to be sensitive to the fact that the term ‘transgender’ is a construct of Western society, may or may not adequately describe what it means to be transgender in certain parts of Sri Lanka. The multi-cultural settings in Sri Lanka such as different ethnic groups, urban-rural differences, conflict affected contexts in North and the East areas, may extend the diversity of issues faced by transgender persons in addition to dynamics such as age, education and other socio-economic differences.

In Sri Lankan society, heterosexual marriage is the only norm while divorce and separation is discouraged, and family violence as well as partner violence is invisible. Given that this environment actively discourages female independence, especially sexual autonomy and gender difference, and limits women’s access to and exposure in the public sphere. The private space of the family is a primary locus of the control of women, and perhaps the most oppressive institution for them. For Lesbian, Bisexual and Transgender (LBT) persons, these circumstances are compounded by the fact that they have no other forms of support (for e.g. they may not be able to request help from friends and colleagues, and cannot approach religious communities or government institutions such as the police and even women’s sheltering services.⁴⁸)

The laws affecting transgender/MSM persons need to be discussed in the light of the history of law, their utilization against transgender/MSM persons as well as the attitudes of law enforcement officers, lawyers and the society⁴⁹. On more than one instance it has been researched and found that it is the *cultural construction* of homosexuality and other ‘trans’ populations that contributes towards the manifestation of abuse in Sri Lanka and other South Asian countries. The oppression within a vacuum of only genes or sexual orientation is too simplistic, and the experience of oppression is distinct under each category of ‘trans’ people, all of which need to be studied in greater detail and handled more delicately⁵⁰. The doing away of criminalizing of non-conformist gender orientations is crucial to the progress of the human rights of TG communities. It will help transgender

⁴⁸ Women and Media Collective, 2014: Not gonna take it lying down. <https://www.scribd.com/document/214827257/Not-Gonna-Take-It-Lying-Down-English>

⁴⁹ Chandimal 2015: Culture of transphobia. Equal ground, Colombo

⁵⁰ Nichols A. (2010): ‘Dance Ponnaya Dance! Police abuses against transgender sex workers in Sri Lanka. *Feminist Criminology* Sage Publications

people to leave behind a life of marginalization and enjoy a life with dignity. A simple shift toward allowing people autonomy to determine how their gender is expressed and recorded is gaining momentum⁵¹. A paradigm shift of legal rights and social conventions only will uplift the transgender population and make them a part of the mainstream society.

The Scope of the Assessment

Following definition of transgender adapted from *The Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations* (WHO, 2014) is used in this study.

Transgender is an umbrella term for people whose gender identity and expression does not conform to the norms and expectations typically associated with the sex assigned to them at birth; it includes people who are transsexual, transgender or otherwise gender non-conforming. Transgender people may self-identify as transgender, female, male, transwoman or transman, trans-sexual or, in specific cultures, as “hijra” (India). They may express their genders in a variety of masculine, feminine and/or androgynous ways.

In this study, a priority will be maintained for transgender persons who have receptive anal sex with men, considering their high vulnerability to HIV. The multi-cultural settings in Sri Lanka, different ethnic groups, urban-rural differences, conflict affected contexts in North and East areas, may extend the diversity of issues faced by transgender persons in Sri Lanka in addition to dynamics such as age, education and other socio-economic differences.

The **Goal** of the Assessment as given in the ToR is to determine how well Sri Lanka has achieved the provision of universal access to appropriate HIV prevention, care, treatment and support for transgender people.

The study will attempt to achieve following objectives to analyze the human rights situation for transgender people in Sri Lanka; to assess and analyze the existing evidence base on transgender people and HIV; and to identify opportunities to strengthen capacity and promote partnerships to ensure broader and better responses for transgender people and HIV. The objectives are elaborated below.

⁵¹ Human Rights Watch World report (2016): Rights in Transition- Making Legal recognition for transgender people a global priority

Objectives

1. Human rights situation for transgender people:

Review past studies and other existing literature to examine the adequacy of scale of policy, legal, social and political environments for delivering appropriate HIV programmes directed towards transgender people at an adequate scale.

2. Evidence base on transgender people and HIV:

An assessment of the quality of data that address HIV and diverse sexuality and gender identities with a view to improve, inform, develop and advocate appropriate policy and programmatic responses. This should include an analysis on population size, epidemiological, behavioural, social, human rights and other aspects, where relevant, and paying attention to different men who have sex with men and transgender identities, behaviours and situations, such as male sex workers etc. HIV-related interventions, including individual-level, community-level and structural interventions, of sufficient breadth, quality, intensity, duration and scale, can reduce the incidence of HIV among transgender people.

The analysis on population size may be based on literature review as the field research is limited to selected geographical areas. However, we are seeking the possibility of accessing confidential data of transgender persons who sought gender reassignment process and other health services.

3. Strengthen capacity and promote partnerships to ensure broader and better responses for transgender people and HIV:

Recommendation on where and how to strengthen the capacity, where necessary, of inter-governmental, governmental (covering health, education, justice, etc) and Non-governmental organizations, at the international, regional and local levels, to work in partnership, to develop appropriate and targeted programming to reach transgender people.

4. Assessment Approach and Methodology

Assessment Approach

A comprehensive situational analysis was conducted with a view to investigating how well Sri Lanka has achieved the provision of universal access to appropriate HIV prevention treatment and care. This included desk review of past studies, legal and policy documents, field research and observations. The methodology applied by the consultant in executing the assignment is explained by below according to activities.

A participatory and inter-active approach in data collection was followed throughout the assessment. Mix of quantitative and qualitative methods were used to collect data and information. Qualitative data was selected from specific sources of information including primary and secondary information related to transgender population and HIV.

The assessment approach and the methodology were presented to an expert committee prior to finalization and recommendations were incorporated to the methodology and tools before the implementation of activities.

As some sensitive questions were included in the questionnaire, the consultant obtained ethical clearance from the faculty of Medicine, University of Peradeniya prior to the implementation of field activities.

Data Collection Tools

Desk Review

Considering the objectives of the TOR, a detailed review was carried out of the available literature and legal and policy status in relation to transgender persons and HIV. Material used for the desk review include, documents, and databases particularly the health policies on transgender persons, data bases in STD/AIDS Clinics, Epidemiological Study Reports and reports and records maintained in the Family Planning Association (FPA), review materials available with STD/AIDS Control Programme and also the National Programmes and Strategic Plans, and overall government policy framework.

During the secondary data collection process, both published and unpublished data and information were collected and reviewed. Key issues and gaps in policy relating to transgender persons in the context of accessing HIV and sexual health services were identified during the desk review. Special attention was given for validation of findings of a previous study conducted on Legal and Policy environment and framework in relation to MSM/TG population in Sri Lanka under the auspices of the Multi-country, South Asia Regional project.

The collected data were reviewed, compiled and analyzed systematically. A draft report was presented to the client for comments. The report included the collected data and information generated from the different stakeholders, the limitation and information gaps which are to be addressed during the primary data collection process.

The Questionnaire Survey

A questionnaire survey conducted with 48 transgender persons represented the Galle, Colombo and Jaffna. Members of the transgender community with field experience coordinated and facilitated field work. This was helpful to make this research process more participatory and transgender-friendly, The Questionnaire included:

- Background/demographic information regarding the participant
- Sexual behavior
- Gender history
- Experiences, attitudes and perceptions on access to health services including HIV, attitudes towards health service providers, quality of care and prevention
- Attitudes and perceptions on social acceptance (stigma, discrimination and recognition from families, friends, community, society, public institutions and officials)
- Mental health, happiness and perceptions about life.
- Awareness on risky sexual behaviors and HIV
- Human rights literacy in relation to gender identity and sexual orientation
- Experiences, attitudes and perceptions on laws, policies affecting transgender persons, and access to legal services

Key Informant Interviews (KIIs)

KIIs were conducted with selected stakeholders (National STD/AIDS Control Programme, FPA, WHO, NGOs including LGBT rights and sexual rights organizations, GOSL Authorities, Project Staff and other Stakeholders). Stakeholders were selected in consultation with the client based on their scope of work, current programmes, previous work, etc.

A guideline was developed for the purpose.

Key Stakeholder Categories for KIIs

- Ministry of Health, National STD/AIDS Control Programmes
- National implementation partners – Decision Makers and Stakeholder who can influence Policy Making (Government and Non-Government) – FPASL, relevant UN Agencies and other key organizations working in the subject area

- Grass-root Level implementation partners of FPA / GF (CBOs and NGOs)
- LGBT rights / transgender rights / sexual rights / PLHIV organizations and individual activists
- Medical service providers
- Officials from the Sri Lanka Police, lawyers and human rights institutions

Focus Group Discussions (FGDs)

FGDs were conducted with transgender persons, health service providers and social workers. A general guide was used to facilitate information generation from the different stakeholders groups selected. However, with regard to transgender persons, specific guidelines using case examples were used to promote a productive discussion and to obtain their specific perceptions.

FGDs were utilized to gain insights and in-depth perceptions on challenges faced by transgender persons in accessing health services including HIV and sexual health. Their experiences related to stigma and discrimination and attitudes towards, laws, policies affecting them are considered as extremely significant in analyzing the situation faced by TG persons with regard to their health rights.

Selection and Training of Field Team

Enumerators were selected to support the Core Team of Consultants to facilitate the field data collection. Field team of members with a sound educational background, knowledge of transgender, STD/HIV/AIDS; previous experience and knowledge of conducting similar studies were given preference in selection. In addition, an experienced TG community member was selected as a research assistant in order to reach the maximum number of the field sample and informal groups. It was helpful in facilitating information gathering process in a friendly manner.

Training was carried out for the field staff about basic information on TGs, identification, rapport building and communication when administering the questionnaire and conducting KIIs and FGDs on related issues. It was also considered as a matter of prime importance to obtain informed consent from the respondents, complying with research ethics.

Sampling

The assessment attempted to follow inclusion criteria to capture the larger picture on transgender persons and the prevailing situation in the country and included those who identified themselves as transgenders, including sub-groups generally categorized under

transgender umbrella term: such as transsexuals, cross-dressers, “nachchis”, third-gender persons, gender non-conforming persons and such other groups.

There were no previous studies carried out in Sri Lanka to estimate the transgender population in the country. Hence even an estimated sampling framework for transgender persons in Sri Lanka was not available. The American Psychiatric Association, using Gender Identification Disorder (GID) criteria, suggested that MTFs had 1 in 30,000 (.0077%) prevalence rate, while FTMs were 1 in 100,000 (.0029%) (APA 2000). If these criteria were adapted with Sri Lankan population statistics, an estimation of 338 MTF transgender persons, and 108 FTM transgender persons could be made. Existing networks of LGBTIQ rights organizations suggest the existence of 80-100 transgender persons in Sri Lanka. In this rapid assessment study, it was attempted to come up with a more reliable size estimation of transgender population by looking into existing databases including statistics of gender clinics and networks of sexual rights NGOs.

A purposive sampling method was used in this assessment as it is a non-probability sampling method where research participants were recruited for a pre-defined purpose.

In this assessment, self-identifying transgender persons who voluntarily consent to participate in the study were recruited from existing networks of sexual rights NGOs, and sexual health clinics. An interviewer administered questionnaire survey and several focus group discussions were conducted with transgender persons. A consent form was signed by the transgender respondents identified for the assessment after explaining about the process prior to the interview.

Table 4.1: Target Group, Location, Data Collection Tools, Sampling Method and Sample Size

Target Group	Locations	Data Collection Tool	Sampling Method	Number of Respondents
Transgender Persons living within and outside Colombo and in selected Districts	Galle	Questionnaire	Purposive	05
	Colombo			35
	Jaffna			07
Transgender Persons living within and outside Colombo and in selected Districts	Galle	Focus Group Discussions	Purposive	05
	Colombo			10
	Jaffna			07
Service Providers (Health Authorities)	Colombo	Focus Group Discussions	Purposive	08
Key Informants	Galle	Key Informant Interviews	Purposive	01
	Colombo			10
	Jaffna			02

5. Findings

Socio Demographic Data

Age of the respondents

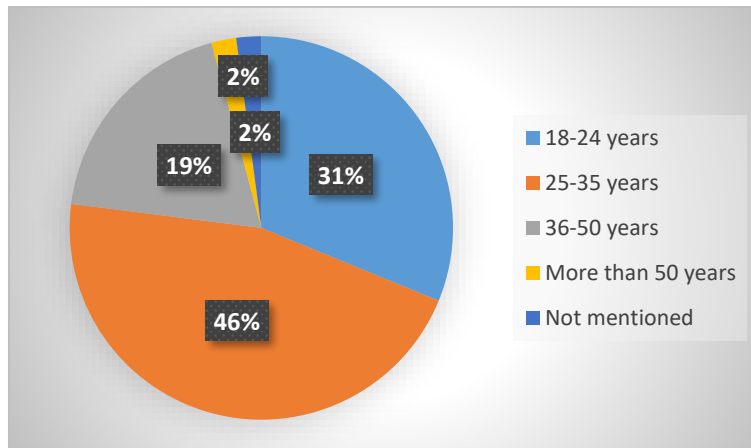


Figure 5.1: Age of the Research Participants

At least 31% of the sample was youth, while the majority of participants were between the ages of 25 -35 years. Only 2% of the sample was over 50 years, suggesting that the visibility of transgender adults over 50 years in networks of LGBT organizations is limited. This gap may be due to several reasons. Sex seeking behavior of transgender persons over 50 years might have reduced, or they are out of the current networks of LGBT organizations. Also it could be a result of differences in socio-cultural contexts, extent of homophobia and transphobia, knowledge and solidarity among transgender community members who are belonging to different generations.

Ethnicity

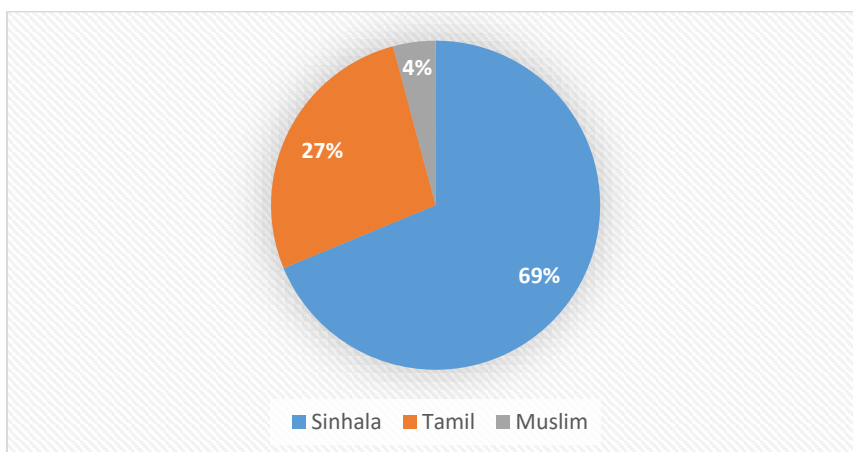


Figure 5.2: Ethnicity

In the respondents' sample, the majority 69% belonged to Sinhala ethnicity, while 27% belonged to Tamil ethnicity, and 4% belonged to Muslim ethnicity.

According to Census of population and housing in 2001, 82% of Sri Lankan population is Sinhalese, while 9.4% are Tamils, and 7.9% are moors. There is an over-representation of persons belonging to Tamil ethnicity in the sample, from general statistics of ethnicities in the country.

This was caused, as the research paid a special attention in including transgender persons from conflict affected areas of North, an area which is predominantly Tamil.

Religion

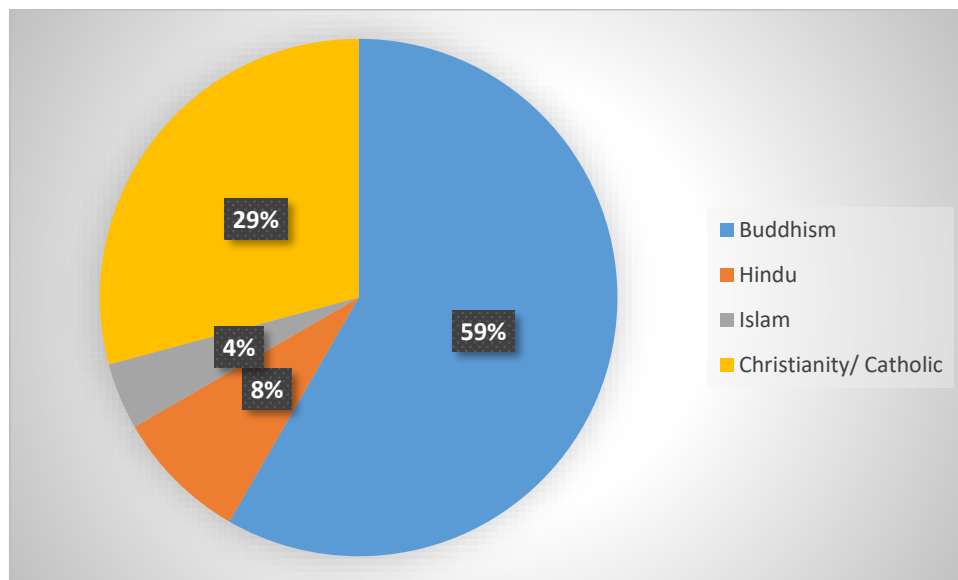


Figure 5.3: Religion

59% of the sample was Buddhists, while 29% were Christians and Catholics, 8% were Hindus, and 4% were Islamic. However the sampling did not represent the ethnic groups distributed in the country and cannot be generalized. -According to Census and Statistics Department, in 2012, 70.1% were Buddhists, 12.6% were Hindus, 9.7% were Islamic, and 7.6% were Catholic and Christian. There is an over-representation of Christians and Catholics in the Sample.

Sex at Birth and Gender Identity

Only 8% of FTM transgender persons were interviewed in the research, as the research priority was on MTF transgender persons as their risk to HIV/AIDS was higher. Hence 8% of the sample, recognized themselves as born as female, while 92% recognized themselves as born as male.

Education

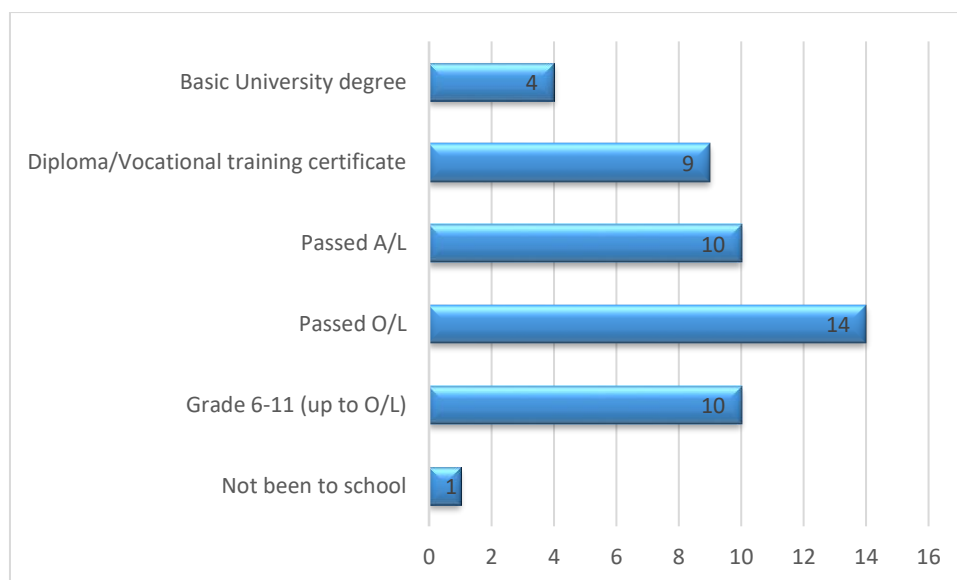


Figure 5.4: Level of Education

Only 2% have not attended school. While there was nobody who has dropped out during primary education, 21% have discontinued their formal education after dropping out during lower secondary education or failing G.C.E. O/L examination. While 29% have discontinued their formal education after passing G.C.E. Ordinary Level (O/L) examination, 21% have discontinued their formal education after completing higher secondary education (A/L examination). There are 19% of persons who have received Diploma and Vocational Training. 8% are either undergraduate students or have completed their basic degree, while there was nobody in the sample who have postgraduate qualifications.

Transgender children and adults face number of difficulties in relation to access education, and how they are treated within the educational institutions. Transgender persons participated at FGDs have faced physical, psychological and sexual abuse from fellow students and teachers at schools.

They feel they are much more vulnerable to these harassments at gender specific (boys) schools. Also transgender children have more freedom of associating friends of their preferred gender at mixed schools. Offensive name calling, neglect, isolation had been experienced by some transgender persons as children at the settings of schools.

Also strict gender specific rules in schools discriminate for transgender children. The teachers have often verbally and psychologically harassed students who do not fit into the accepted gender norms and roles.

Employment

Transgender persons engage in very specific range of occupations especially in commercial sex work, Beauty culture, Hospitality field, NGO sector and limited numbers in the government sector.

Table 5.1: Employment of Respondents

Employment category	No.	Percentage
NGOs	10	20.83%
Unemployment	9	18.75%
Beauty culture & Fashion	8	16.67%
Sex work	5	10.42%
Hotel/Casino	2	4.17%
Business - Self employed	2	4.17%
Government	1	2.08%
Other	6	12.50%
Not mentioned	5	10.42%
Total	48	100.00%

The majority of the respondents, 21% worked in the NGO sector, especially as field officers of GFATM project supported activities. Even within that sector, only one person belonged to decision making level of the organization.

There are 10% respondents who identify themselves as sex workers, while 19% are unemployed. The majority of unemployed persons, and employed persons also engage in sex work periodically though they do not recognize their employment as sex work.

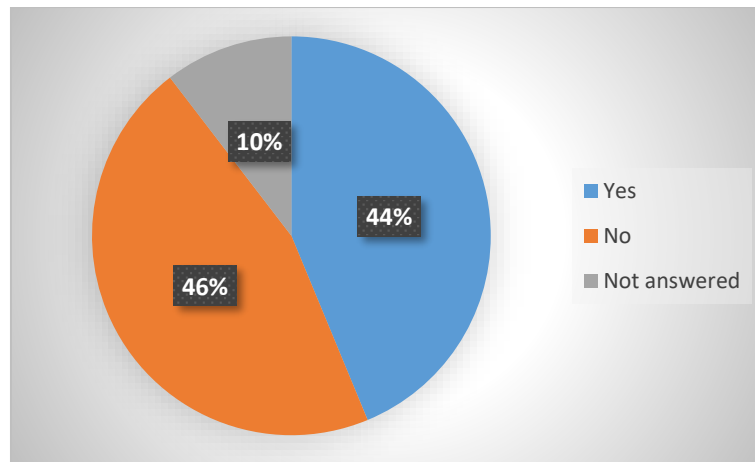


Figure 5.5: Engaging in Sex Work

46% of the sample has mentioned that they engage in Sex work, out of which 28% engage in sex work on full time basis. However the sample size of FTM is not adequate to analyse the nature of sex work and also these findings cannot be generalised to the Sri Lankan situation

17% are employed in beauty culture and Fashion design jobs. Beauty culture and fashion design is considered a conventional employment for transgender persons due to stereotypical gender norms existing in the country. 4% of respondents engage in hotels and casinos, while another 4% of respondents engage in self-employed businesses.

Since the access to employment is very limited, the majority transgender respondents have found community level jobs at LGBT rights organizations which are again limited in their number. Secondly engagement in sex work is also due to lack of employment opportunities. Thirdly respondents are employed in traditional jobs for transgender persons such as beauty culture, fashion industry, entertainment and hospitality industry. The majority of these jobs are lower paid jobs, with lack of involvement in decision making. It should be highlighted that rarely transgender persons are offered government jobs. Only 2% of the sample is employed in the government sector.

Workplace Discrimination and Access to Employment

“The very first challenge comes from our own homes. Then education. We lose education. From one thing, to other... How many things do we lose? Even if we study, we are not taken to jobs.”

- A transgender person in Colombo

High unemployment rate and low income among transgender persons is linked to lack of educational and other opportunities offered to them. Only few transgender persons are skilled workers, many of transgender persons remain unskilled labourers. Such skilled labour is also mostly limited to few industries like beauty culture and fashion design.

No systematic method is available to incorporate gender changes into educational certificates. Discriminatory cultural norms are enforced on transgender persons, by work cultures.

For example, majority of cooperate sector workplaces require males to have short hair, and personality of males is measured on stereotypical norms of masculinity. Such work norms discriminate not only transgender persons, but also other persons who behave differently from those strict gender norms.

20 respondents (42%) mentioned that they have experienced workplace harassments. The harassments included refusal to offer job opportunity, not offering job promotions, verbal and non-verbal harassments and physical harassments due to one's sexual orientation or gender identity.

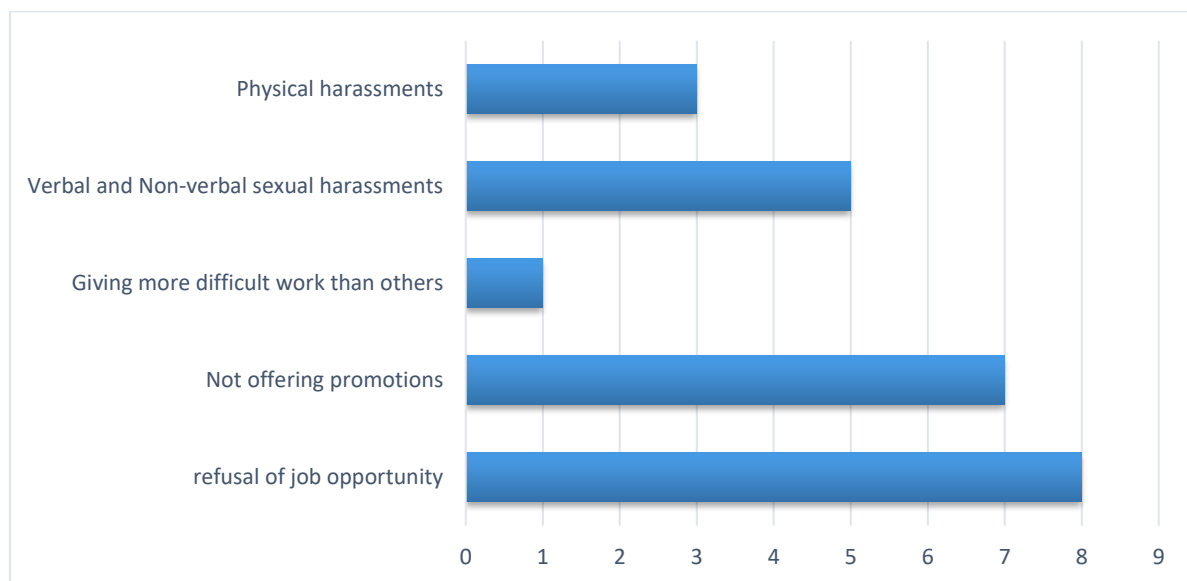


Figure 5.6: Harassments faced at the workplace

The transphobia and homophobia at workplace and job interviews have limited the access to employment of transgender persons. Transphobia and homophobia are expressed in many forms directly, indirectly, vertically, horizontally, and structurally in work cultures. It could be direct verbal harassments, or physical harassments, or indirect non-verbal gestures, or administrative decisions, or norms or rules in the working culture. Also such harassments come from fellow workers, or from the management.

Sexual Experiences and Behavior

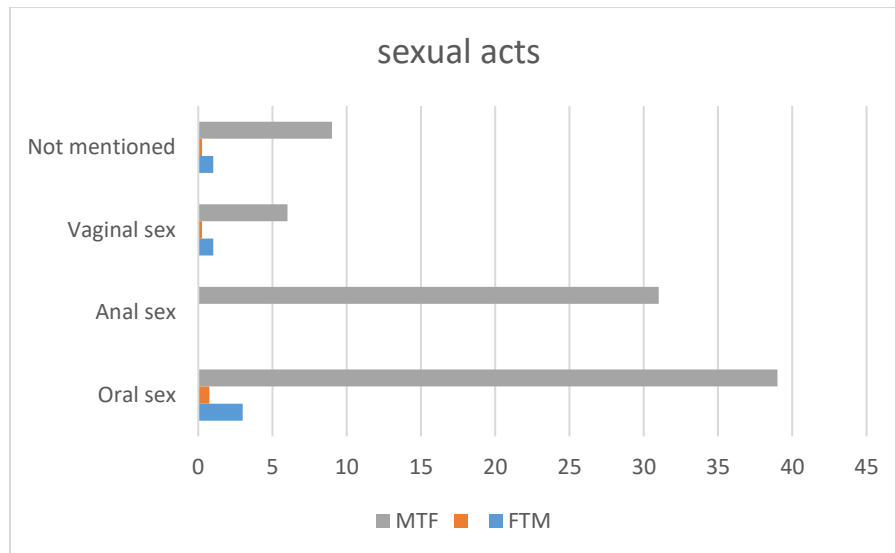


Figure 5.7: Sexual Acts

In the questionnaire, several questions were asked about the sexual experiences and behavior of the respondents. The penetrative sexual acts among transgender persons were not limited to stereotypical views influenced by binary gender framework. The majority of MTF transgender persons mentioned that they had oral sex and anal sex, while minority of them also mentioned that they had vaginal sex as well. Out of the 4 FTM transgender persons, 3 persons mentioned that they had oral sex, while only 1 person mentioned of having vaginal sex.

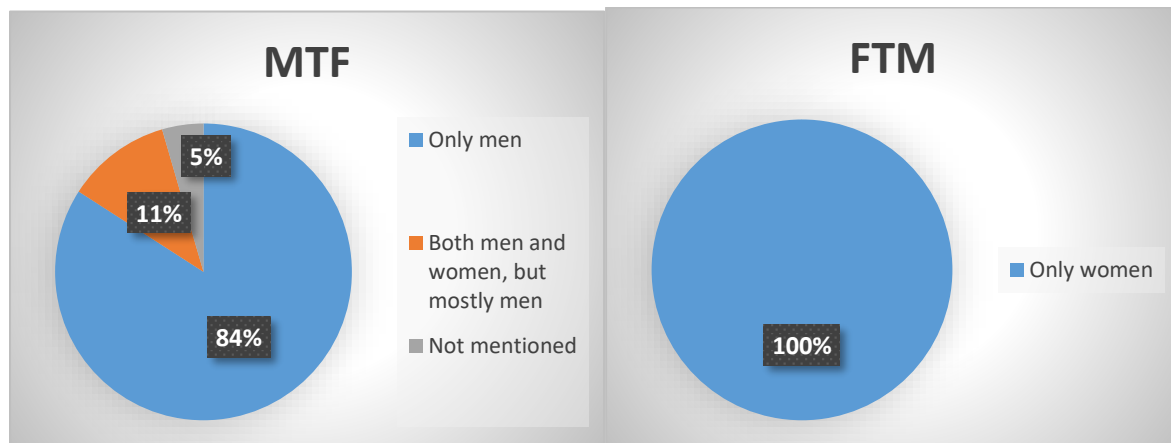


Figure 5.8: Sexual partners of transgender persons

All the female to male transgender persons mentioned that they only had sexual activities with women, while it was different in case of male to female transgender persons. 84% of MTF transgender persons had sex only with men, while 11% of them had sex with both men and women, but mostly with men. 5% of them have skipped answering the question.

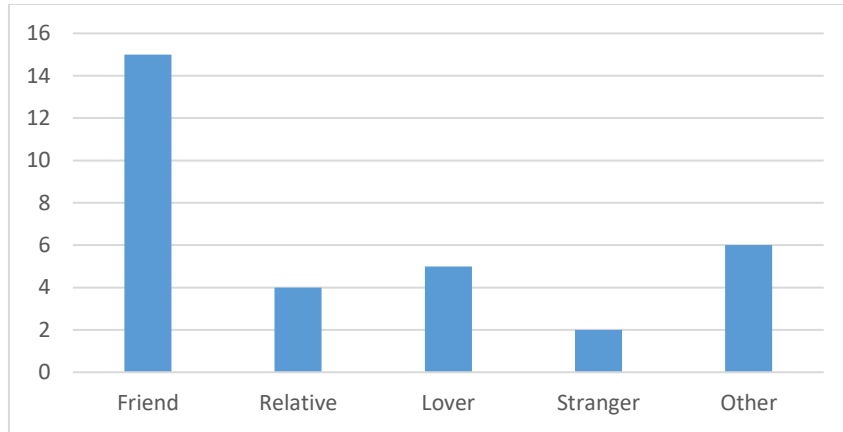


Figure 5.9: Relationship to the person whom they had sex first during their childhood

Majority 72% of the study sample mentioned that their first sexual encounter was before 16 years of age. Irrespective of consent, having sex with someone below 16 years of age is considered as Rape or child sexual abuse. However the majority had engaged in sex during their childhoods willingly. The persons they had first sex included mostly their friends, secondly their lovers, thirdly their relatives.

Also they mentioned that majority of them have engaged in sex work. Among 43% of transgender persons mentioned the number of sexual partners they had is above 100 persons. Only 10% of the sample has mentioned having only one partner.

Majority 77% have sex only with men and 10% with both men and women. The most popular sexual act among transgender persons is Oral sex 81% and 64% having anal sex. It shows that majority engage in both oral and anal sexual relationships and 12% have vaginal sex experience.

Knowledge on the Transmission of HIV

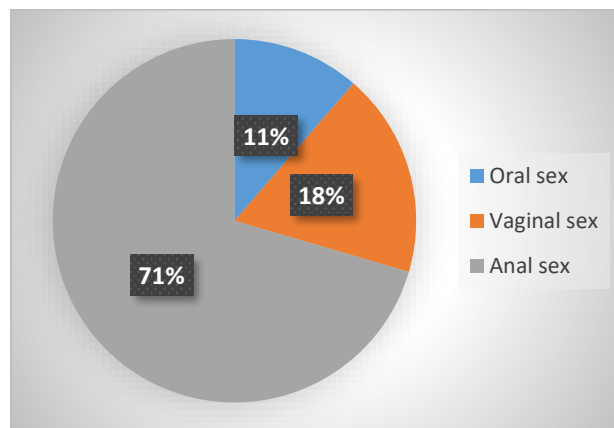


Figure 5.10: Sexual act with highest risk of HIV transmission according to respondents

Majority 64% of TGs interviewed correctly mentioned that the highest risk of HIV transmission is through anal sex and only 16% and 10% indicated highest risk through

vaginal and oral sex. More than 30% of the respondents did not have the basic knowledge on the sexual acts which transmit HIV. For example, 31% of respondents believed HIV can be transmitted through touching, kissing and thigh sex.

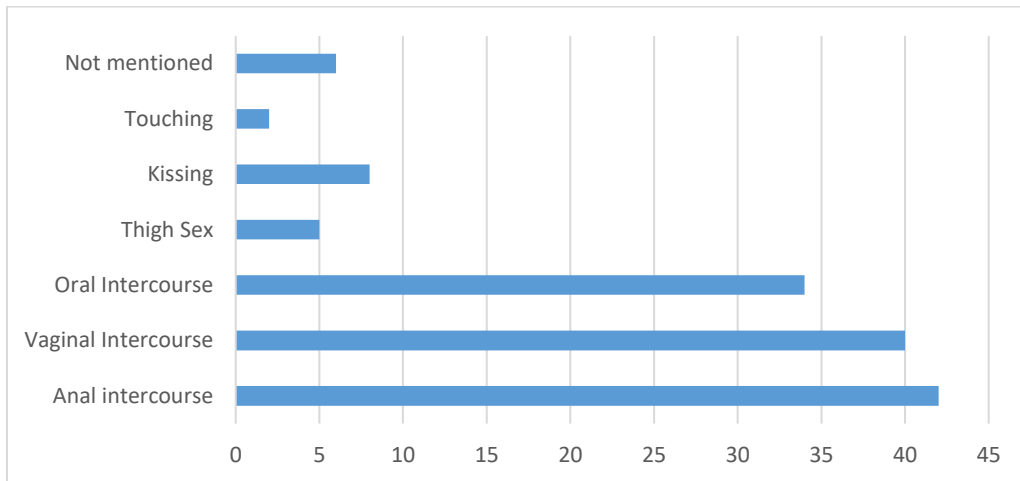


Figure 5.11: Sexual acts which HIV can be transmitted

Knowledge on Prevention of HIV Transmission

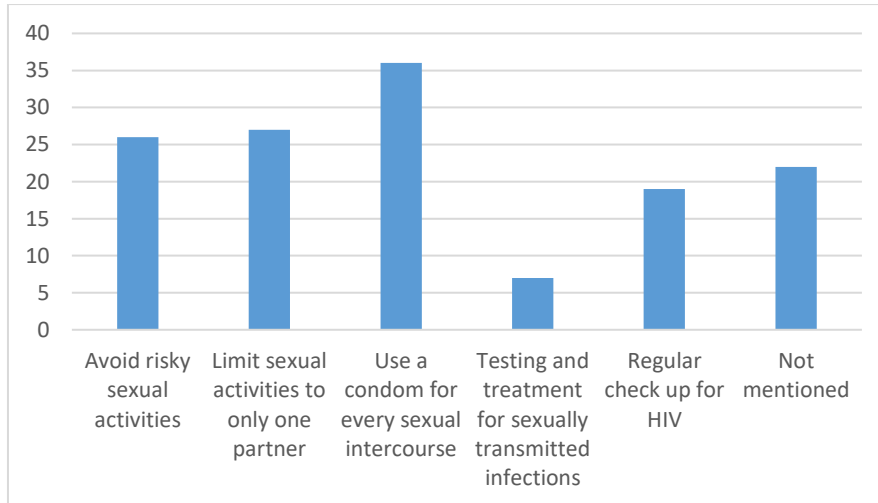


Figure 5.12: How to reduce the risk of HIV transmission according to Respondents

Using condoms for prevention of HIV was mentioned by the majority 75% of the Transgender persons. Limiting sexual relationships to one partner was mentioned by 56%. Thirdly another 54% mentioned avoiding risky sexual behaviour. While 40% have indicated regular checkup for HIV, another 14% have mentioned testing and treatment for STIs to prevent transmission of HIV.

Condom Use

Regardless of making aware and carrying out promotions at different levels, regular use of condoms is limited among majority of the Transgender persons. Oral sex and anal sex are the commonest practices and 10% mentioned that they have never used condoms in oral sex, while 4% mentioned that they never used condoms for anal sex. Also 25%, and 29% of the sample did not mention whether they use condoms respectively in oral sex and anal sex. The majority of these persons are either not using condoms or, people having difficulties to speak about condom use due to cultural reasons.

31% use condoms every time they have oral sex, while only 39% use condoms every time they have anal sex. Another 25% of respondents use condoms on ad hoc basis.

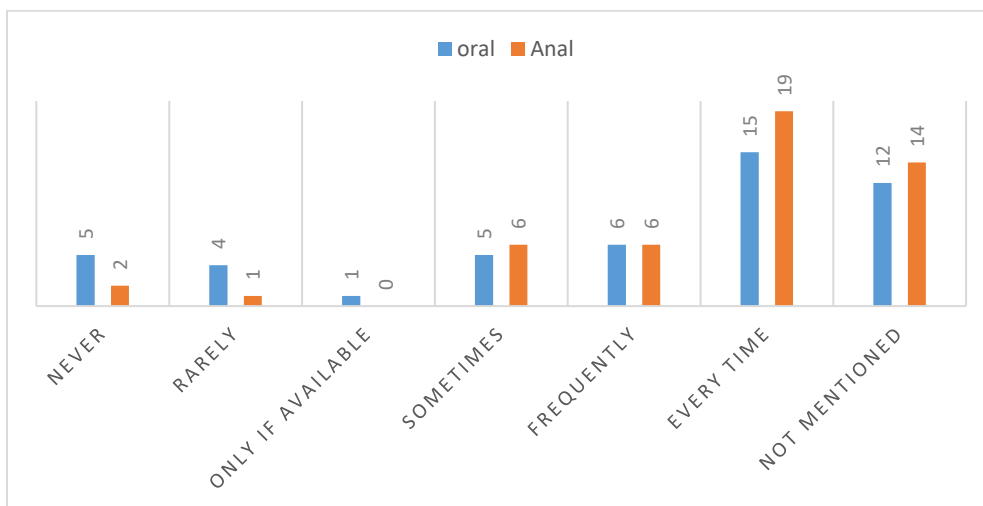


Figure 5.13: condom Use

Condom availability is very high as 54% carry condoms with them and 14% mentioned that they can borrow condoms from friends and another 16% mentioned it is available in shops.

However in the areas which GFATM project activities are not operated, the condom availability is lacked, and there are no interventions to distribute condoms to transgender persons and MSM persons as done in other areas. This was specifically observed in Jaffna, which was a post-conflict area, and also numerous cultural taboos as well.

The decision to use condoms varies with the situation and it may affect prevention of HIV tremendously.

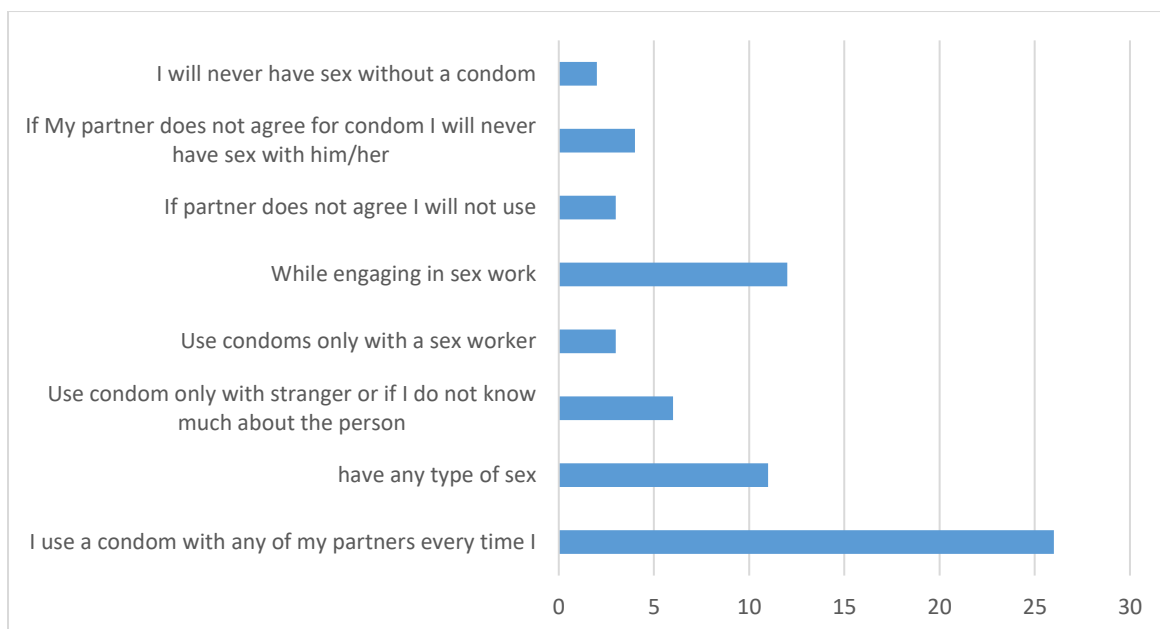


Figure 5.14: Attitudes and practices towards use of condoms

Only 25% use condoms when they engage in sex work. Only 4.2% mentioned that they will never have sex without condoms. 6.2% mentioned that they will not use condoms if the partner does not agree to use condoms, while only 8.3% mentioned that they will never have sex with a partner who refuses to use condoms. This shows the attitudes towards condom use is not favorable even after targeted interventions on transgender populations. Use of lubricant is high at 78% with 54% use them every time they have sex.

Testing For HIV and STI

Majority 83% have been tested for HIV and out of which 55% have been tested within last 3 months. Also 57% stated that they do testing for HIV on a regular basis in each 3 months period. This indicates a better impact of Global Fund project activities in the implemented districts. It is important to find out more specifically about the situation in areas such as North and the East where the GF project is not operated.

Table 5.2: HIV testing

Have you been tested for HIV/AIDS?	Number	Percentage
Yes	40	83.30%
No	7	14.60%
Not mentioned	1	2.10%
Total	48	100.00%

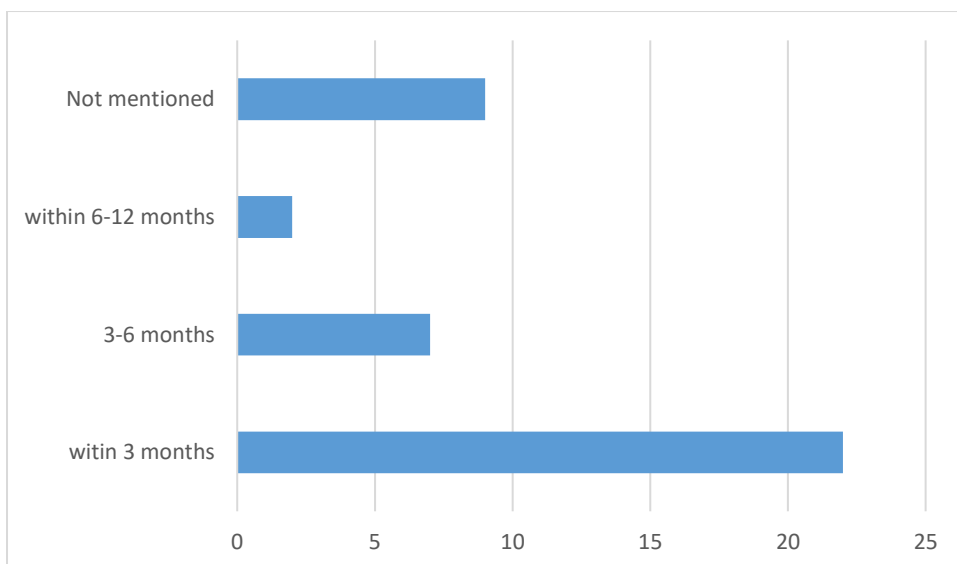


Figure 5.15: Last HIV test

Even though there is a higher percentage of TGs who are regularly tested for HIV, only 37% have tested for other STIs at least once within last two years.

Table 5.3: Higher percentage of TGs who are regularly tested for HIV

Have you been tested for other STDs during last two years?	Number	Percentage
Yes	18	37.50%
No	28	58.30%
Not mentioned	2	4.20%
Total	48	100.00%

17% reported that they were diagnosed and treated for STIs. This highlights the priority given to HIV/AIDS based on funding priorities, has led to a low focus of interventions on other STIs which are more prevalent than HIV in Sri Lanka.

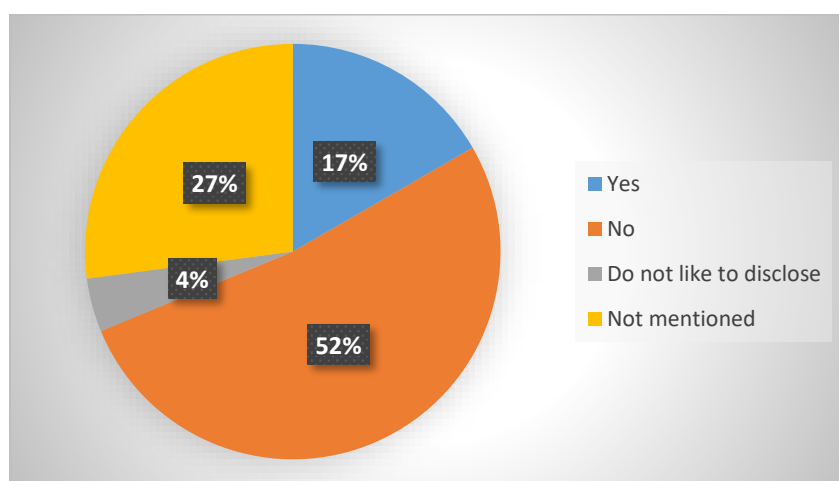


Figure 5.16: Have you ever been diagnosed with a STI

Experience in the Clinic Setting

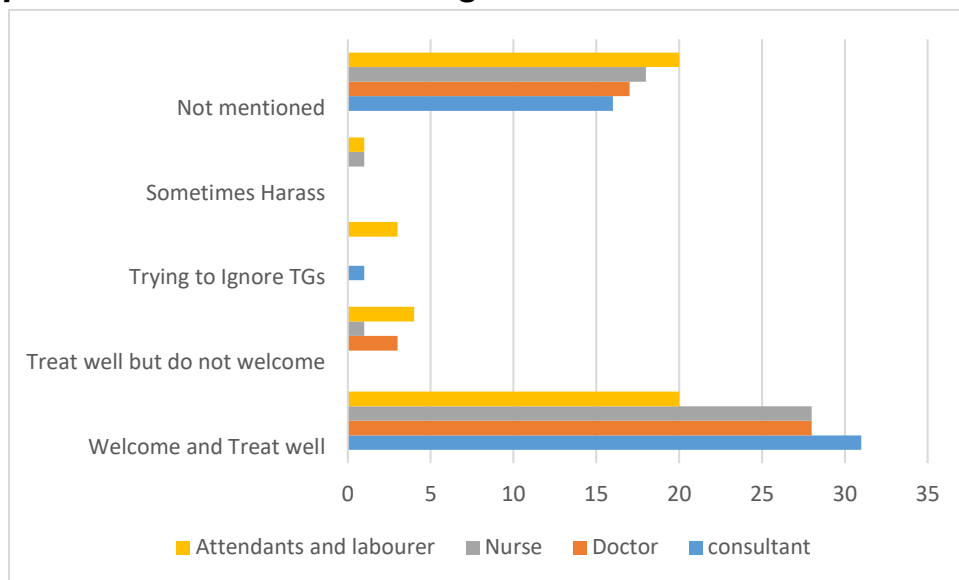


Figure 5.17: Attitudes towards health staff

Nearly 50% of the clinic attendees are happy about the way that they are treated at the sexual health clinic with 29% stated that they were very happy. The highest response was 64% for the consultants at the clinic for treating and welcoming and the lowest was for the attendants and laborers. Even though limited in number, there are two responses which mention about harassments from nurses, and attendants.

This was highlighted at the focus group discussions as well. Clinic attendees are happy with the services provided by the technical staff such as doctors, nurses, Lab staff and the pharmacist.

Psychological health

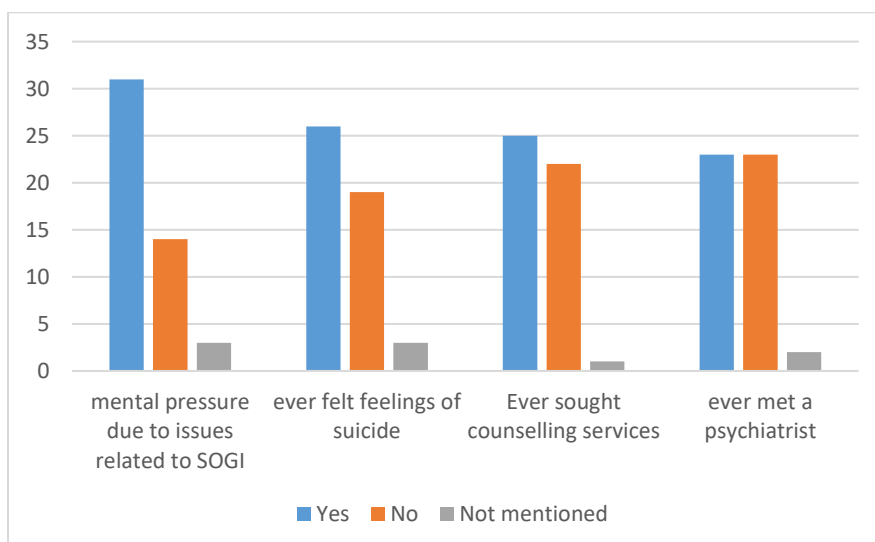


Figure 5.18: psychological health and access to counselling services

The stigma, discrimination and other psycho-social issues faced by transgender persons lead to many psychological health issues related to transgender persons. 64% of the respondents mentioned that they have experienced psychological pressure and other psychological issues due to their sexual orientation and gender identity, while 54% of the respondents mentioned that they had feelings of suicide.

47% of the respondents have consulted a psychiatrist and 10% have been diagnosed with a mental illness. 57% of respondents have received counseling. It seems their access to counselling and psycho-social services is higher. Some transgender persons are in the process of gender reassignment treatment and getting psychiatric assessment is the first step in their gender reassignment process. However only 33% of psychiatric attendees are satisfied with the mental health services provided for them.

Harassments from police and awareness about laws among transgender community

As previous studies indicate, Transgender persons and transgender sex workers face harassments from police, and unequally treated before the law (Andrea, 2010; Chandimal; 2015). In this study, nearly 50% of the respondents mentioned they were either arrested or detained by the Police due to reasons of engaging in sex work, cross dressing, and loitering on the roads in the night time and other reasons.



Figure 5.19: Reasons for the arrest

The highest percentage (34%) of arrested (or detained) persons by the police was arrested under the charges of loitering on the road in night time. Secondly 30% were arrested for sex work, and while 26% have been arrested for cross dressing. The reasons suggest that the majority of them have been arrested under vagrancy law.

Nearly 22% of them have been prosecuted before courts. According to respondents, 63% of such cases are related to issues concerning their gender identity or sexual orientation. 18% of the total sample has faced difficulties in obtaining legal services due to their gender identity. This highlights the importance of sensitizing the legal professionals on issues concerning transgender community.

Table 5.4: Awareness on the laws affecting transgender persons

Level of Awareness	Section 365	Vagrancy Ordinance	Birth Certificate Amendment	ID card Amendment process	impersonation laws	Fundamental Rights and Constitutional protections
Well aware	38%	38%	58%	58%	33%	35%
Somewhat aware	10%	8%	23%	17%	6%	13%
I have heard	10%	4%	4%	6%	10%	17%
I have not heard	4%	4%	2%	4%	4%	2%
Do not know	29%	33%	2%	4%	35%	25%
Not mentioned	8%	13%	10%	10%	10%	8%

At least 25% of transgender persons believe that they do not have enough knowledge about laws criminalizing homosexuality, vagrancy ordinance, impersonation laws, fundamental rights and constitutional protections. There are 2% -4% of transgender persons who have not even heard of these laws and process of amending Birth certificate and National identity card. Comparatively awareness about the process of amending Birth certificate and National identity card is higher than the awareness on other laws affecting transgender persons. But this was very low among the participants in Jaffna, where Global Fund activities are not operated. The knowledge about laws, legal processes, and fundamental rights and other legal protections should be provided to transgender persons, in order to improve their protection, access to legal services, and reporting of the human rights violations faced by them. One of the main challenges faced by LGBT rights networks is the lack of reporting of the human rights violations faced by transgender persons.

Population Size of Transgender Persons

In Sri Lanka, two mapping exercises were conducted with regards to the number of MSM population respectively in 2010, and 2014. In 2010, it was estimated that 30,554 MSM ranging from 23,699 to 37,410 live in Sri Lanka (NSACP, 2010). In 2014, another study estimated a total of 7551 MSMs in the country with a minimum of 6547 to a maximum of 8554(NSACP, 2013). The gap between two estimates bring out the difficulty of making an estimate about a hidden population. In addition to being hidden population, there are definitional dilemmas in estimating the population size of transgender persons. The majority of groups, individuals and LGBT activists we interviewed, mentioned about

these difficulties and warned about the pitfalls of coming up with an estimate of transgender population.

In most of the countries, prevalence estimates have traditionally come from gender clinics (MeierAnd (Meier and Labuski 2013). Though we were not able to access the clinical records of gender clinics, based on the information received at Key Informant interviews with medical practitioners, and transgender community we estimate that around 350 persons in Colombo, and around 10 persons in Kandy seek treatments for gender reassignment process. The treatments are mainly provided only at these two cities, and number of transgender persons from provincial areas travel to Colombo for treatments.

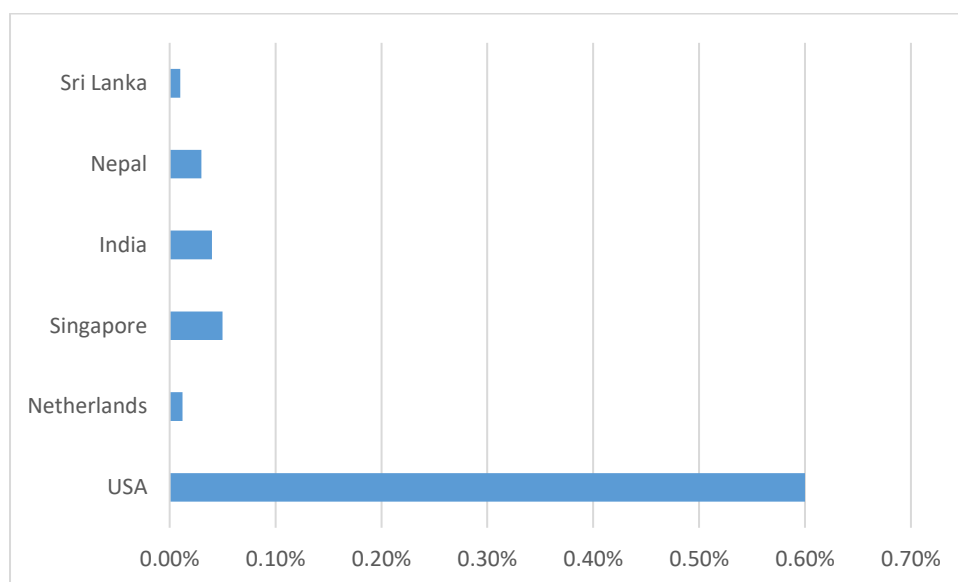


Figure 5.20: Transgender population in different countries

According to Meier & Labuski (2013) the prevalence data most frequently cited come from a gender clinic in the Netherlands and demonstrate that 1 in 11,000 (.009%) persons are MTF, and 1 in 30,400 (.0032%) are FTM (van Kesteren 1996). According to Williams Institute, about 1.4 million adults (0.6%) in the United States identify as transgender, double a widely used previous estimate (Flores, et al. 2016). A study from Singapore found 1 in 2,900 (.034%) MTFs and 1 in 8,300 (.012%) FTM, while a study in Belgium found 1 in 12,900 (.0077%) MTFs and 1 in 33,800 (.0029%) FTM (Winter et al. 2009). According to Gender dysphoria criteria in DSM-5, prevalence ranges from 0.005% to 0.014% for MTF, and from 0.002% to 0.003% for FTM (APA 2013). According to these criteria, Transgender population in Sri Lanka varies between 720-1750. *Gender dysphoria* refers to the distress that may accompany the incongruence between one's experienced or expressed gender and one's assigned gender. As all transgender persons may not experience distress, and seek gender transition process, and considering the wide variety of identities within transgender umbrella term, the number of transgender persons in Sri Lanka should be higher than this.

According to an official count conducted in India, there are 490,000 transgender persons (0.04% or 1 in 2500 persons) in India (Times of India, 2014). In Nepal, it is estimated that there are 7,706 and 9,221 (0.03%) transgender persons (HSCB 2011).

However the sample reached in this assessment is not adequate to do scientific size estimation for Sri Lanka hence there is a need for proper size estimation for Transgender population.

6. Conclusions and Recommendations

Conclusions

Sri Lanka is a low prevalent country for HIV and the rate is below 0.1% among adults (15-59 years old). The estimated No. of people living with HIV is about 4,200 according to the NSACP annual report 2015 in which approximately 50% belong to the Key Populations group. Since 2010 the incidence of HIV infection among adults of general population remains static hence the prevention programmes are targeted mainly for key populations. Key populations are defined as those who are having specific higher-risk behaviours, are at increased risk of HIV irrespective of the epidemic type or local context. Also, they often have legal and social issues related to their behaviours that increase their vulnerability to HIV. The five key populations are: 1) men who have sex with men, 2) people who inject drugs, 3) people in prisons and other closed settings, 4) sex workers and 5) transgender people. Under the Sri Lanka National HIV Strategic Plan 2013-2017, the main focus of the program is prevention (Strategic Direction 1) with main strategy targeting key populations, i.e. FSWs, MSM, people who use or inject drugs and beach boys, and other vulnerable groups. Implementation of the National HIV Strategic plan is mainly funded by GFATM.

The principles of basic human rights of how gender development should have no bearing on individuals accessing fundamental rights such as access to health care, education and employment. The gender evolution and development process is universal. But the individuals, such as transgender persons, who break the rigid boundaries of identifying with genders other than the one assigned at birth, tend to face discrimination to a humiliating, violent, and sometimes lethal degree. Such persons often lack the ability or knowledge to protect themselves from HIV infection, due to structural discrimination (lack of access to information and services) which make them more susceptible to HIV (Human Rights watch: World Report 2016)

A number of factors may make transgender people more susceptible to HIV infection or less likely to use prevention methods or access treatment if they become infected. Biological factors include hormone therapy, Social and structural factors that increase trans people's vulnerability to HIV include stigma, fear of disclosure, sexual networks that include more people with HIV, poverty, lack of employment opportunities which leads many trans women to engage in sex work, violence, lack of access to health care, substance use and mental health issues such as depression.

The GFATM project is in operation in 12 identified districts except North and East targeting key populations through its national and grass root level structures. Transgender persons are included in the MSM category and it has made attention on specific TG issues are diluted.

The findings of Rapid assessment included qualitative and quantitative data collected from Colombo, Galle and Jaffna.

Human Rights Situation for Transgender People

Sri Lankan law has not purposefully discriminated transgender persons, yet, due to not having special clauses for protection of rights of transgender persons and due to misinterpretation in application of law, transgender persons have faced issues related to equality before the law as well as gender based violence. Non-discrimination and equality before the law are two fundamental human rights protected from the Constitution of Sri Lanka.⁵² Although Sri Lanka has guaranteed formal equality, there are issues related to protecting substantive equality.⁵³ Due to internalized ‘normal’ identity, when a person does not belong to the norm, they are not treated equally.⁵⁴ Transgender persons feel they are not adequately protected and face discrimination in access to resources, access to education, health services, employment, relationships, legal services and other public services and facilities.

Provisions of non-discrimination⁵⁵ and equality⁵⁶ are highlighted in the Sri Lankan Constitution. Article 12.2 states ‘no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.’ This Article does not explicitly state non-discrimination based on sexual orientation and gender identity. This issue has been pointed out in the Human Rights Watch report⁵⁷ as well as the International Gay and Lesbian Human Rights Commission (IGLHRC)’s report to the Human Rights Committee.⁵⁸

In recent times, policy makers have given considerable attention towards the rights of transgender persons. Milestone achievement this year includes introducing a clear pathway to change sex in official documentation such as national Identity card, Birth Certificate and educational certificates and Human Rights Commission initiating a sub-committee on ‘LGBTI Rights.’

The need to incorporate sexual orientation and gender identity in the new Constitution in order to ensure transgender persons right to non-discrimination and equality before the

⁵²*Constitution, 1978, a 12. (SL)*

⁵³This statement is based on the interview with Interview with Ambika Satkunanathan, 19 October 2016. Substantive equality is fair equality of opportunity. Bevir(2010). It deals with indirect discrimination. Laubeová(2000)

⁵⁴Interview with Kamani Jinadasa. 10 October 2016.

⁵⁵*Constitution (1978) a. 12.2 (SL)*, No person shall be discriminated against on the ground of religion, language, caste, sex, political opinion, place of birth or any such grounds.

⁵⁶*Constitution (1978), a. 12.1 (SL)*, All persons are equal before the law.

⁵⁷Human Rights Watch (HRW) report states although the Constitution states non-discrimination and equality before the law, there are no specific law in Sri Lanka that provides protection from discrimination on the basis of gender identity and sexual orientation. HRW (2016) p. 52.

⁵⁸IGLHRC has noted not having specific anti-discriminatory language on sexual orientation and gender identity has caused disadvantage for LGBT people in accessing rights, protection and legal guarantees.

law are explicitly recognised, the Human Rights Commission has made the recommendation to Parliament Select Committee on Fundamental Rights and Public Representation Committee.⁵⁹

Current Government seems more interested and open to promote and protect the rights of LGBTIQ. ⁶⁰ Some of the Government interventions include, considering recommendations to guarantee the basic human rights of LGBT community in the proposed Constitution and setting up procedures for legal gender recognition.

It was recognized that the knowledge on Laws and rights related to gender identity in Sri Lanka is low among transgender persons. In this assessment it was found that there is a satisfactory improvement in the law enforcement sector and t in the health sector on accepting transgender communities. Harassments found low in police stations and in STI clinics but harassments by certain categories are comparatively high.

Evidence Base on Transgender People and HIV

Population Size

Global Fund for AIDS Tuberculosis and Malaria is the main programme implemented in 12 districts targeting key populations. The total key populations in Sri Lanka are estimated between 60,000 to 84 000 and primarily include MSMs, IDUs and CSWs in which transgender population is included in the MSM category. Two mapping exercises have been conducted with regards to the number of MSM population respectively in 2010, and 2014. In 2010, it was estimated that 30,554 MSM ranging from 23,699 to 37,410 live in Sri Lanka (NSACP, 2010). In 2014, another study estimated a total of 7551 MSMs in the country with a minimum of 6547 to a maximum of 8554(NSACP, 2013). The gap between tow estimates bring out the difficulty of making an estimate about a hidden population. In addition to being hidden population, there are definitional dilemmas in estimating the population size of transgender persons.

Socio Demographic and Cultural Information

This assessment was carried out in 3 locations namely, Colombo, Galle and Jaffna to capture social, cultural and demographic variances. It was found that the transgender people are present all over the country and in all the religious and ethnic groups but mostly concentrated in and around Colombo. TGs who were born in villages and suburbs have moved to the urban areas due to discrimination and stigma faced by them. It is observed that TG population is mainly gathered around MSM based organisations and there are few networks of TGs operating in the capital. With the initiation of Global Fund programme on HIV Sexual minority groups have got a chance to involve with HIV

⁵⁹Interview with Ambika Satkunanathan (19 October 2016).

⁶⁰Chandimal, D. (2016) and Bardswich, K. (2016).

prevention and control activities and also appear for TG rights. It was observed there is a very good coordination mechanism with the TG communities where the GFATM programme is operationalized but no interaction especially in the North and East as there are no GFATM project activities. It was highlighted that in Jaffna none of the key populations attending the STI clinic for nay service. The officials of the STI clinic in Jaffna informed that there is a strong cultural influence for the sexual minorities and the Key populations appear in public places and attending the clinic. In the south the social restrictions are not very strong but sometimes they are rejected and discriminated in various instances. TGs in the southern province are performing dances as a group in most of the main religious processions (*Perahara*) i.e., -Kandy, Sabaragamuwa, Kathragama . This shows that there is some recognition by the religious and social organisations. Many TGs in the lower and middle level socio economic groups do not engage in formal occupational sector. Nearly 50% of the sample engages in sex work either full time or part time. This shows that dropout from schools, not having and skills training, not having job opportunities, rejection from formal settings, stigma and discrimination in the society have pushed them to select sex work or other occupations linked with sex industry.

Sexual Behaviour

Majority of the sample examined were Male to Female Transgender people and 8% were Female to Male Transgender persons. It is important to know that 72% of the respondents have had sexual experience below the age of 16 years and with a male.41% of the sample mentioned that they have been sexually abused after 16 years of age. Sexual intercourse with or without consent below the age of 16 is considered as Rape but these instances are not recorded. Oral sex 81% and anal sex 64 % were the main sexual activates among transgender persons. Majority 43% of TGs mentioned they are engaged in Sex work full time or part time and only 10% had only one sexual partner and 43% have had more than 100 sexual partners. Condom use among Transgender people for high risk sexual activities (Anal Sex) is 31%. It needs further in depth behavioural study to identify factors influencing low level of condom use and to take actions.

The knowledge on the transmission of HIV among Transgender people is satisfactory still fair percentage of TGs having misconceptions about spread of the virus which needs correction.

Health Services and Health Seeking Behavior

Transgender population is been reached through the Global Fund Round 9 project in 12 districts except the North and the East provinces due to the long standing war situations. It was identified no key populations attending for STI care to the clinic. As there are no formal programmes implemented in these areas there is no attention on this population by the government or by the NGO sector. In the South where the GF project is implemented TG s are included in the MSM category, there is no special attention given. With the FGF Regional project FPA SL has initiated some interventions at policy, legal and advocacy level with TG participation. It has given an opportunity for the TGs to lobby their issues and concerns and also to initiate a dialog at different levels including health sector. TG community highlighted that situation in most of the STI clinics are satisfactory and they are accepted and treated well by most of the staff but still there are some categories discriminate them. The health staff also accepted that there are some staff members who are not having proper knowledge about TGs treat them differently. They also requested to give the health staff knowledge about Key populations who are coming for treatment. Testing for HIV is high but regular testing is not satisfactory. The attention given for testing for other STIs has reduced due to high priority given for HIV by the service providers.

High percentage of TGs has had suicidal ideas because of the mental depression and other psychological issues but the percentage seeking mental health services and counseling is low. It is important to pay attention to providing psychological services for the TG population or integrating psychological services with existing targeted services

Recommendations

Based on the evidence, findings and conclusions arising out of the assessment, the following recommendations for follow up interventions can be identified for further consideration.

- Create awareness and sensitization among all levels of health care staff in the public and private sector institutions as most of the harassments at health settings happen from the minor staff of health settings.
- Educate Transgender persons across the country using Behaviour Change Communication processes on prevention and control of STIs and HIV AIDS.
- Provide knowledge on gender transition process, resources and services available.
- Ensure trans-representation in transgender community interventions such as service provision, Awareness programmes, training and research on transgender community.
- Make STI clinics as Transgender friendly facilities with seating arrangements, Toilet facilities and services provided by trained staff with awareness on TG communities.

- Provide Trans-specific health facilities such as facilities for transgender surgeries at low cost or free of charge, similar to other health facilities provided in Sri Lanka.
- Expand Key population targeted HIV prevention activities especially to the North and East and other areas where GF project is not implemented.
- Strengthen provision of the psycho social counseling and mental health services to the LGBT community and their families.
- Support to establish Trans-specific safe houses, dropping centres should be established at major cities which supply health services to transgender persons.
- Raise awareness on laws, policies and legal processes affecting transgender persons among transgender community and establish a hot line for information and legal aid.
- Ensure transgender Representation at the National AIDS Committee and other top level committees would empower them through increasing their visibility and recognition as a stakeholder in the national HIV prevention response and strengthen them to advocate for their rights, including decriminalization.
- Conduct in depth behavioural surveillance and formal size estimation of TG communities in order to develop evidence based prevention strategies.
- Advocate for Amendment of Article 12 on Right to Equality of Sri Lanka's Constitution⁶¹ and state explicitly that sexual orientation and gender identity are prohibited grounds for discrimination.⁶²
- Ensure full compliance with Article 2⁶³ and 26⁶⁴ of the International Covenant on Civil and Political Rights, Sri Lanka needs to repeal Section 365, 365 A and 399 of the Penal Code.⁶⁵

The above evidence based suggestions are expected to create an enabling environment for improving opportunities for transgender persons with regard to access to health services in the context of prevention, control, treatment and care of HIV/AIDS. In order to establish acceptable size estimation of transgender community, further in-depth research may be needed covering the rest of the country.



⁶¹*Constitution, 1978 (SL).*

⁶²Human Rights Committee(2014) relevant recommendation

⁶³*ICCPR, a 2*, Ensure rights without discrimination.

⁶⁴*ICCPR, a 26*, Everyone is equal before the law and has a right to legal protection 'of the law' without discrimination.

⁶⁵Human Rights Committee (2014) Recommendation 8; HRW, 2016, p. 6.

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ANNEXES

Annex 1 -Survey

General Information

1. What is your current age:.....

2. Your highest education level:
 - I. Not been to school
 - II. Grade 1-5
 - III. Grade 6-11 (up to O/L)
 - IV. Passed O/L
 - V. Passed A/L
 - VI. University Diploma/Vocational training certificate
.....
 - VII. Basic University degree
 - VIII. Post-Graduate
 - IX. Other.....

3. Your ethnicity:
 - I. Sinhala
 - II. Tamil
 - III. Muslim
 - IV. Other : Burgher/ Malay/

4. Your religion:
 - I. Buddhism
 - II. Hindu
 - III. Islam
 - IV. Christianity/ Catholic
 - V. Other

5. Mother tongue :
 - I. Sinhala
 - II. Tamil
 - III. English
 - IV. Other

6. What is the sex assigned to you at your birth?
 - I. Male
 - II. Female
 - III. Other (explanation- inter-sex persons)

7. What is your gender identity now?
 - I. Man
 - II. Woman
 - III. Other
8. If you belong to 'other' category, please describe it.(I am stuck in a wrong body, I am cross-dresser , Nachchi, transgender/transsexual, queer, I don't want to belong t a category,I don't know)

.....

9. Do you cross dress?
 - I. Yes
 - II. No
10. If yes, how often do you do so?
 - I. Everyday all the time
 - II. Every day sometimes
 - III. Several times in a week
 - IV. Several times in a month
 - V. Once a month
 - VI. Other.....

11. If yes, in which settings do you do so?
 - I. At home
 - II. Roads, public transport, and other public places
 - III. At office
 - IV. At gay parties and other gay/TG community gatherings
 - V. When attending health clinics/ hospital
 - VI. All the places of everyday life
 - VII. While having sex
 - VIII. Other

12. In which age did you identify your gender identity was different from others?

.....

 - I. 0-5 years
 - II. 6 years- 10 years
 - III. 11 years -16 years
 - IV. 16 years – 20 years
 - V. 21 years – 25 years
 - VI. Other

13. Your employment:
(sex work is recognized as an employment)

14. Do you engage in sex work?

15. If yes, how often do you engage in sex work?

- I. Full time
- I. Part time
- II. Only at specific times festival season)
- III. Other-----

16. Your monthly income level:

- I. 0- 5,000 LKR
- II. 5,001- 12,500 LKR
- III. 12,501- 20,000 LKR
- IV. 20,001 - 35,000 LKR
- V. 35,001- 50,000 LKR
- VI. 50,001- 100,000 LKR
- VII. More than 100,000 LKR

17. Name of the city/ Town/ Village you are now living:

.....

18. Name of the city/ Town/ Village you lived in childhood:

.....

19. If 17 and 18 are different, do you think that you changed the residence due to any factor associated with gender identity or sexual orientation?

- I. Yes
- II. No

20. What is the reason to change the residence?

- I. Discrimination/stigma towards your sexual orientation and gender identity
- II. Opportunities for Employment
- III. Opportunities for Education
- IV. Opportunities to meet and live with friends in similar kind
- V. Other

.....

21. Have you changed the gender in your birth certificates?

- I. Yes
- II. No
- III. In the process

22. If yes, does your birth certificate include your gender history?

- I. Yes
- II. No

23. Were you able to change your educational certificates according to new gender?

- I. Yes
- I. No

Sexual and Romantic life

24. At which age, did you have your first sexual encounter?

.....

25. Your relationship to the person who first had sex?

- i. Family member
- ii. Friend
- iii. Relative
- iv. Lover
- v. Stranger
- vi. Other

26. Have you ever had sex as a child?(before 16 yrs.)

- I. Yes
- II. No

27. Your relationship to the person who abused you? (if multiple persons are involved, you can choose multiple options)

- i. Family member
- ii. Friend
- iii. Relative
- iv. Lover
- v. Stranger
- vi. Other

28. At which age, did you have your first love affair?

29. What was the gender of your first lover?

- I. Man
- II. Woman
- III. Other

30. How many sexual partners you ever had in your life?

- I. One person
- II. 1-5 persons
- III. 6-10 persons
- IV. 11-20 persons
- V. 21-30 persons
- VI. 31-50 persons
- VII. More than 50 persons
- VIII. More than 100 persons

31. Gender of your sexual partners

- I. Only men
- II. Only women
- III. Both men and women, but mostly men
- IV. Both men and women, but mostly women
- V. Both men and women
- VI. Other:

32. What kind of penetrative sexual acts usually do you engage?

- i. Oral sex
- ii. Anal sex
- iii. Vaginal sex

33. Have you ever been sexually abused as an adult?

- i. Yes
- ii. No

34. Your relationship to the person who sexually abused you as an adult?

- i. Friend
- ii. Co-worker
- iii. Family member
- iv. Employer or manager
- v. Your partner/lover
- vi. Stranger
- vii. Other.....

Safe Sex/ Condom and lubricant use

35. How do you use condoms (please tick)

	Oral	Anal	Vaginal
Never			
Rarely			
Only if available			
Sometimes			
Frequently			
Every time			

36. How do you decide to use a condom with a person you have sex?

- I. I use a condom with any of my partners every time I have any type of sex
- II. Use condom only with stranger or if I do not know much about the person
- III. Use condoms only with a sex worker
- IV. While engaging in sex work
- V. If partner do not agree I will not use
- VI. If My partner do not agree for condom I will never have sex with him/her
- VII. I will never have sex without a condom
- VIII. Use condoms only for anal sex
- IX. Use condom if it is available

37. Condom availability

- I. I always carry condoms with me
- II. Condoms are available with friends and I can ask for condoms any time when I want
- III. I can buy a condom from a shop anywhere in the country
- IV. Condoms are not available on most of the times I am going for sex
- V. Other....

38. How often do you use lubricants for anal/vaginal sex?

- I. very time
- II. Frequently
- III. Sometimes
- IV. Only if it is available
- V. Rarely
- VI. Never

HIV/ AIDS and other STDs

39. Have you been tested for HIV/AIDS?

I. Yes

II. No

If yes,

40. When did you do the last test for HIV/AIDS?

.....

41. How frequently have you been tested for HIV during last two years?

I. Once a three months

II. Once a six month

III. Once a year

IV. Once for two years

V. Not tested

VI. Other

40. What is your HIV/AIDS status

I. Negative

II. Positive

III. Do not like to disclose my status

41. Have you been tested for other STDs during last two years?

I. Yes

II. No

42. Have you ever been diagnosed with any other STD?

I. Yes

II. NO

III. Do not like to disclose

43. How do you feel about how you are treated at sexual health clinics?

I. Very good

II. Good

III. Neutral

IV. Bad

V. Very bad

Gender transition

44. Do you expect to go for a gender reassignment surgery?

I. Yes -not yet started

II. Yes -in the process

III. No -I don't want

IV. Yes- but I cannot afford

45. If Yes, Why do you want to have a gender reassignment surgery?

.....

Work place harassments

46. Do you face any discrimination in access to employment or at your workplace due to your gender identity or sexual orientation?

- I. Yes
- II. No

47. If yes, what kind of discrimination do you face at workplace?

- I. Not taking to the job
- II. Not offering promotions
- III. Giving more difficult work than others
- IV. Verbal and Non-verbal sexual harassments
- V. Physical harassments
- VI. Neglect/Isolation and other psychological harassment
- VII. Rape/ sexual abuse
- VIII. Other:

.....

Mental Health

48. Have you ever had any mental pressure or any such issue due to problems related to your gender orientation

- I. Yes
- II. No

49. Have you ever felt feelings of suicide?

- I. Yes
- II. No

50. Have you ever sought counseling services?

- i. Yes
- ii. No

51. Have you ever met a psychiatrist?

- I. Yes
- II. No

52. Do you think that there are sufficient mental health services available to Transgender persons in Sri Lanka?

I.Yes-but not satisfied

II.Yes -Satisfied

III.No

53. Are you aware of following laws and Legal sections and procedures(please tick-you can have multiple answers)

Category	Well aware	Somewhat aware	I have heard	I have not heard	Do not know
Section 365 of Penal Code					
Vagrancy Ordinance					
Birth Certificate changing process					
Obtaining Identity Card with gender change					
Impersonation Laws					
Fundamental rights recognized in the Constitution					

54. Do you have any specific thing you want to tell us ,specific to this study

Annex 2 - Key Informant Interviews

List of Officials /persons interviewed

List of Interviewees

No.	Name	Designation	Name of the Organization
1.	Ms. Madhusa Dissanayake	Director of Advocacy & HIV/AIDS	Family Planning Association of Sri Lanka
2.	Dr. Sisira Liyanage	Director NSACP	NSACP
3.	Dr. D.O.C. De Alwis	Consultant Veneriologist	NSACP Colombo
4.	Mr. Thenuka Diyanagiri	Chairperson	Wenasa Transgender Network
5.	Ms. Kamani Jinadasa	Primary Prevention Specialist	International Rescue Committee (IRC)
6.	Dr. Dyanath Ranathunge	Former Country Manager	UNAIDS
7.	Mr. Jayan Wbeyawikrama	Programme Officer	UNFPA
8.	Ms. Princy Mangalika	President	Positive women's Network
9.	Ms. Dhanushka Rajarathnam	Chief legal Officer	Equal Grounds Office, Nawala
10.	Ms. Ambika Satkunanathan	Commissioner	Human Rights Commission of Sri Lanka
11.	Dr. Dilmini Mendis	Veneriologist	Technical Hospital Jaffna
12.	Dr. Tharani	MO STD	Technical Hospital Jaffna
13.	Dr. Kapila Ranasinghe	Consultant Psychiatrist	GH Angoda and Colombo NHSL
14.	Mr. Jude	Secretary	Hart to Hart
15.	Dr. Prasad De Silva	MO STD	BH Balapitiya
16.	Mr. Ajith Rohana	DIG	Sri Lanka Police

Draft questions

1. Have come across with a group of people called Trans genders living in the community?
2. How do you recognize them in the society?
3. In your opinion what kind of people they are?
4. Do you think that they are treated equally in the society and in the public places?
5. What are the issues and problems can occur in the society because of their presence?
6. Do you think that they are having equal chances for education, higher education and for jobs in the govt. and in the private sector?
7. Are there any legal implications for their presence in the society?

8. Is there any risk of getting HIV infection due to beliefs, knowledge and behaviors of the transgender community?
9. What formal and informal rules, regulations and laws exist in workplaces, schools, institutions, etc. that contribute to the transgender community's risk of HIV infection?
10. Do you think that HIV risk can be reduced by giving equal rights for the TG community in the society?

Police Officers

Age, ethnicity, post, experience in police service, gender,

1. Do transgender persons live in your police division?
2. According to your knowledge what are their jobs?
3. Do they engage in sex work?
4. Do they engage other illegal work?
5. Have you arrested them? the reason and
6. Under which the legal section do you arrest them?
 - a. 365 in penal code
 - b. 399 in penal code
 - c. vagrant ordinance
 - d. Brothel house ordinance
7. What punishments are issued by the courts?
8. Why do they do cross dressing?
9. Are they different from homosexuals?
10. Are they mentally ill?
11. Do they trouble 'normal' people?
12. Are there transgender persons who live descent lives?
13. Some of them go into medical surgeries to change their biological sex. What do you think of this?
14. Do you think transgender persons come under law's protection?
15. Do you think transgender persons experience discrimination and inequality before law?
16. Do you think human rights of transgender persons are violated?
17. In some countries human rights of the transgender persons are accepted. What do you think of this?
18. What actions Sri Lanka needs to take on this regard?

Lawyers

1. Details about you: Age, ethnicity, post, organization, experience as a lawyer, expertise field
2. What is your general idea about transgender persons?
3. Are they mentally ill?
4. Why trans persons want to change their gender?
5. What is your idea on how they are treated in Sri Lanka?
6. According to you, under which laws/legal sections trans persons are commonly arrested and why they are arrested under those laws?
Section 365, 365A
Section 399 – impersonation
Vagrancy ordinance
Brothel house ordinance
Other.....
7. What is your idea about vagrancy law?
8. What is your idea about law of impersonation section 399?
9. What is your idea about 365 and 365 A?
10. Do you think that transgender persons do not come under equal protection of the law?
11. What is your idea about transgender rights?
12. Do you think that human rights of transgender persons are violated in Sri Lanka?
13. In india 'third gender' was accepted as a separate gender category. How do you see this action?
14. There are number of researches which mention that transgender persons experience sexual harassments and violence from police. Do you agree with this?
15. What can be done to improve legal protection for the transgender persons?
16. Have you appeared for a case related to a transgender persons? Details
17. Have you heard of any court case related to a transgender persons?
18. Do you think that it is suitable for Sri Lanka, to take actions to promote transgender rights?
19. Do you think that transgender persons experience unemployment than others or face discrimination with regards to getting an employment? What actions can be taken if they were discriminated on the basis of their gender identity in getting a job?

20. Transsexuals face issues in changing their birth certificates and education certificates. What actions can be taken to avoid these issues/ make the process smoother?
21. Your comments and suggestions on this issue

Teachers

Age, ethnicity, gender, experience as a teacher

1. What is your general idea on transgender persons?
2. Have you met transgender children?
3. Why do they behave so?
4. Are they mentally ill or is there something wrong with them?
5. According to your religion/culture how do you define their existence?
6. Are they weak in studies?
7. What issues do such people experience in the school?
8. Do transgender students face other psychological issues like stress, attempts to suicide etc?
9. Are transgender children more vulnerable to sexual abuse than other children?
10. What actions can be taken to avoid such issues?
11. As a teacher, how do you see trans children's situation in this country?
12. Any suggestions/ comments

Medical Professionals

Age, ethnicity, gender, experience as a doctor

1. Have you treated to transgender persons
2. What is your general idea about them?
3. Why do they behave like that?
4. Do you think they are more vulnerable to HIV/AIDS and sexually transmitted diseases?
5. Why do you think so?
6. According to you, what are the issues faced by them?
7. What is your idea about gender identity disorder? Is it an illness?
8. What is your general idea about gender transition surgery and hormone therapy? Is it suitable for Sri Lanka?

9. What are the issues they have with regards to hormone therapy?
10. What are the issues they have with regards to Gender transition surgery?
11. Do you think that transgender persons have enough medical facilities in Sri Lanka?
12. According to you, what are the other issues faced by transgender persons?

Document Registration Officers

Age, ethnicity, gender, experience as a registration officer

1. Have you seen transgender persons?
2. Have such persons come here to receive your service?
3. Details of the service
4. What is your general idea about such persons?
5. Why do they behave in such a manner?
6. Are they mentally ill?
7. Is there something wrong with them?
8. What is your idea about gender transition surgery?

Divisional Secretariat officers

Age, ethnicity, gender, experience as an officer

1. Have you seen transgender persons?
2. Have such persons come here to receive your service? details of the service
3. What is your general idea about such persons?
4. Why do they behave in such a manner?
5. Are they mentally ill?
6. Is there something wrong with them?
7. What is your idea about gender transition surgery?

Annex 3 - Guide for Focus Group Discussions

Activity 1: Vignettes

Vignette 1

Shehan is 22 years old. He comes from a Buddhist family in Kandy. His father is a Grama Sevaka officer in the village. Their family is well-respected in the area. Shehan was the youngest in the family. He had one elder brother and one elder sister.

From childhood, he preferred to spend more time with his sister and her friends. He rarely liked the association with his brother. He attended a boys' school. He did not like playing cricket, but singing and dancing dressed in female clothes. Also he acted female characters in school dramas. Sometimes he stayed late at school, for drama practices. He first began his love and sex at the age of 14 years, with Hassan, a Muslim boy in his school who was older than him. The boys visited each other's homes without any issue, even spent nights together. The parents were not suspicious of them as they thought they are friends.

Meanwhile Shehan found another friend like him Bashitha in his school. He also liked behaving like a girl. Both of them did shopping together, bought female clothes, and wore them inside their rooms. While having sex, shehan liked to wear female clothes. Also he liked him to be called Shehani by Hassan. Nobody else knew their secrets. Though Hassan knew Shehan's womanly behavior from the beginning, he later forced Shehan to stop behaving like a girl. He also asked to stop associating feminine friends, and he said that he cannot take Shehan to his home because of Shehan's feminine behavior.

After A/L examination, both of them left the school. Meanwhile Shehan's sister found out some gay porn in Shehan's laptop and she informed it to the mother. Then they found out female underwear in Shehan's clothes cupboard, and also information about his relationship with Hassan. Subsequently Hassan's family was also informed about this. Following this incident, though Shehan wanted to continue the relationship, there was no positive response from Hassan. He said he will marry a girl and will forget all these things.

After that, Shehan was taken to psychiatrist by the family. The psychiatrist has attempted to change his transgender behavior.

After sometime, Shehan comes to Colombo for further education in a private university. He stays in his relative's house in Colombo. Now he finds his sex partners online through dating sites. He is having sex with various persons. He does not wear female clothes all

the time. However he likes to wear female clothes while having sex. And sometimes, he attends to gay parties in Colombo cross-dressed as a girl. He also has a facebook profile with a woman's name and he chats as woman.

Though his other friend who was like him has now started with a gender transition process, Shehan does not want to start with such a process, thinking it is a shame on his family. He identifies himself as somebody between 'he' and 'she'. He is not sure what his gender identity is. However he still prefers to identify himself more towards a 'man' when he has to choose one option. After the studies, he plans to migrate to a European country where he can live as a free person.

Questions to explore

1. Do people like Shehan live in your community?
2. Shehan does not identify as a woman. But still he cross dresses as a woman, likes to wear female underwear while having sex. Are there people like this in your community?
3. Does he belong to the TG community?
4. Shehan comes from a Sinhala Buddhist family in a village in Kandy. How do Sinhala Buddhist background would impact upon a TG person in your community?
5. How will other religions will impact upon TG persons situation?
6. How do people like Shehan will spend their childhood? What the experiences of childhood of TG persons you know?
7. Hassan tries to change Shehan's womanly behavior. Do partners of TG persons try to change their gendered behavior?
8. Hassan says 'I cannot take you to my home because you behave like a girl'. Is it something TGs in your community also face?
9. Hassan asked Shehan not associate feminine friends. Do other TG persons also face such problems?
10. What problems Hassan might have faced as a person who is coming from a Muslim family background? Why cannot his family accept Shehan as the lover? What is the situation of TG persons in Muslims communities?
11. Many TG persons' families are not aware of their gender identity and sexual orientation. What has happened to TG persons when such information were learnt by family members?
12. Hassan says he does not want to continue the relationship and he will marry a girl after his family get to know about this. Is this something TG persons generally experience? How do TG people's affairs generally get break?

13. Shehan's family takes him to a psychiatrist to change his TG behavior? Is this something happen in your community? How common are the reparative therapies to TG persons in your community?
14. After coming to Colombo, Shehan finds various sex partners online. How do TG persons use online space to find their sexual partners?
15. How do TG persons use online space to network with people like them?
16. What do you think of condom use and safe sex practices among TG populations?
17. What type of problems and issues the TG community or people like Shehan face in the society?

Vignette 2

Sriya is 35 years old. She is Tamil in ethnicity. She is originally from a rural area in Vavuniya District. She dresses herself in female clothes in the night time and works as a sex worker in Anuradhapura town. During the day time, she wears male clothes and works as a daily labourer.

In childhood, her family was under poverty. Her father had died when she is small. She has been to school only up to grade 8. As a child she had been sexually abused by one of her close relative. She also recalls how she had sex with a soldier in the nearby army camp in her village.

At the age of 15, she had been sent to work in a shop in a Vavuniya town. There she was paid a meager salary. There she had started an affair with a trishaw driver, he has also trafficked her for sex. After sometime, she herself has started cross-dressing in nights and engaging in sex work. After she got arrested by the Police, her employer had sacked her from the job.

After that, several times she had been also arrested and asked to pay small amounts of fines. Also sometimes the police officers have asked her for bribes, and sexual favors. She says the police sometimes takes her to police when she is on the road, and calls her offensive words 'ponnaya' etc. publicly.

When she travels in public transport, she had faced public humiliation, name calling etc. She also recalls that several times she was raped by groups of men, though she was asked to have sex with a single person or two. Also some homophobic persons have physically attacked after taking to have sex with her. After sometime, she has moved to the next city Anuradhapura, in where she finds lot of customers and nobody knows much about her.

She has several times visited to hospital to take treatments for sexual health issue. However she has experienced stigma from hospital staff and other persons in the hospital.

Now she has rented a small room in Anuradhapura town and she works as a daily labourer at day time.

Questions to explore

1. How are the TGs accepted within Tamil culture in Sri Lanka?
2. How are the TGs accepted within Muslim culture in Sri Lanka?
3. What is the situation of TG sex workers in Sri Lanka? What are the challenges they have to face?
4. In your community, are there TG sex workers?
5. Sriya recalls that she was abused as a child. Do TG persons are vulnerable to sexual abuse during their childhoods?
6. Sriya is first trafficked for sex work by her boyfriend. Does this happen commonly. Do TGs become sex workers as a result of trafficking?
7. Sriya first starts with a pimp. Then decides to work as a street sex worker on her own. In generally, are they operated through pimps or find sex work on their own?
8. Sriya is a poor TG person who goes into sex work. Are there rich persons, persons from middle class engage in sex work?
9. Sriya was arrested by police several times under charges of engaging in street sex work. How the sex workers like Sriya treated by the police?
10. Often people like Sriya arrested under the vagrancy law. What do you think of vagrancy law?
11. Is section 365 A which criminalize homosexuality used against people like Sriya?
12. Sriya faces number of harassments from various people. Can she go to the police against the injustices she faces? Can other TGs you know go to the police in injustices they face?
13. Sriya is harassed while travelling in public transport. Do other TGs you know also face such harassments in public transport?
14. She has experienced stigma from hospital staff as well. Is this something TGs generally experience at hospitals? Who is responsible in such stigma and discrimination?

Vignette 3

Keshan is a female to male transsexual person. He is now 42 years old. She was born in an urban town in Matara district. Since his childhood, he did not like wearing girls' clothes. He always wanted boys stuff. Even in selecting toys he always preferred guns instead dolls. He was the only child of the family. So he received lot of love also.

While going to school, even though he did not like to wear frocks, he had to wear them anyway. He hated wearing female clothes to school. However he spent most of the time with boys in the school. He played cricket and football with other boys.

The teachers started criticizing for behaving like a man. They number of times advised him not to cut hair short. Even parents were advised by the teachers about his gendered behavior. She had a close friend Gayathri. The teachers and students suspected them of having a lesbian affair.

However Keshani did not have such a thing with Gayathri. She had a relationship with another girl named Upuli in the neighborhood. Upuli and Keshani wrote love letters to each other, had sex with each other time to time. He even told his girlfriend one day he will become a man, so they can marry.

From his teenage years, she dreamt of being transformed into a man. In the dream, he actually saw that a god helping her to become a man. Later he learnt about surgeries which transform female body into a male body. From a foreign magazine, he read a story of a transsexual.

The parents at first, advised her not to behave like a man. They wondered who will marry this kind of girl. The other relatives of the parents advised not to allow this girl to behave like this. Father especially got angry. Once he burnt all of Keshan's male clothes. However Keshan did not change himself.

Step by step, he managed to convince his parents that he needs to become a 'man'. First they did not believe it is possible. They thought 'this one has gone mad'. Mother did lot of religious rituals such as Bodhi pooja to stop Keshan thinking like this.

He studied computer graphics and started working as a graphic artist in a reputed company in Matara. At the age of 25 years, she first went to see a psychiatrist to discuss possibilities of a transsexual surgery. The first psychiatrist she met refused to support her. However she found another psychiatrist who would like to support for a gender transition process through another TG friend who is in such a process. Keshan's family helped him to cover the expenses with basic surgeries.

At the age of 28, he started with hormonal treatments, and then by the age of 32 she completed with initial surgeries of breast, and womb removal. When he was admitted in the hospital for surgeries, his right to privacy was breached by the medical staff. The

nurses and attendants asked continuous, never ending questions from him. Also his identity was revealed to other patients, family members of patients etc. However he is unable in affording for the last surgery.

After the surgeries, he tried several days going to his job. However in several days he realized that people were laughing at him, and looking at him strangely. Soon he left the job there.

Meanwhile he was able to change the gender in his birth certificate, and National identity card. However by the time, his girlfriend Upuli has married another guy due to influence of her family. Later he made a love affair with another girl, he met in the bus. After associating her for a period of one year, he revealed his gender history to the girlfriend. Though the girlfriend was first shocked to learn this, she was later okay. They soon got married.

After some years of their marriage, the parents of her partner were curious why they do not have children. Then they learnt about his gender history. They forced her wife to go and complain to the police claiming that she was cheated by this impersonated man. Now she has filed a divorce case demanding compensation, while police has also filed case against him on impersonation. He has suicide thoughts now.

Questions to explore

1. How do the issues faced by Transsexuals differ from the issues faced by other transgender persons?
2. Keshan faced many issues at the school. What are the issues faced by TG children at schools?
3. Keshan manages to convince his family that he needs to undergo through a gender transition process. What is the situation in relation to other transsexual persons you know in your community?
4. The first psychiatrist he met refused to do his surgery. What are your views about psychiatrists and their involvement in the gender transition surgeries in Sri Lanka?
5. Keshan's right to privacy was breached by the medical staff themselves. Is this something experienced by other transgender persons you know in your community?
6. While Keshan undergoes surgeries to change his gender his girlfriend is married to another person. The person whom Keshan married files legal case against Keshan due to family pressure. What kinds of issues are faced by the persons who choose to marry TG persons?
7. How do you deal with the issue relating to social norm of 'not having children'?

8. What are your views of cheating by impersonation charges against TG persons? Do they really cheat and hide their gender history?
9. Do you think that gender history needs to be revealed to your partner before marriage?
10. What are the issues faced by MTF transgender persons?
11. Does your life style change after the surgeries? If so, in which manner, such changes have happened.
12. Do TG persons have enough access to employment? What are the issues faced by TG persons within their employments.

Annex 4 – Detailed Review of Literature

Introduction: The evolution of gender of a person differently from the time of birth is a universal process, breaking the rigid boundaries of gender assignment at birth. Gender development should have no bearing on whether someone can enjoy fundamental rights, like the ability to be recognized by their government or to access health care, education, or employment. But for **transgender people**, it does—to a humiliating, violent, and sometimes lethal degree. The issues faced by transgender persons are not limited only to outright, brutal violence, but the barriers to accessing health services and care, lack of education makes them 50 times more susceptible to acquire HIV. (Human Rights watch: world report 2016)

‘Transgender’ are individuals whose gender identity and/expression differs from their sex assigned at birth. They may see themselves as male, female, gender non-conformist or one of a spectrum other genders. The word transgender is an umbrella term which is used to describe a wide range of identities and experiences, including: female-to-male and male-to-female sex reassigned persons, but also cross-dressers, drag queens, drag kings, gender queers, and many more. In the South-Asian region this would include *hijras*, some *kothis*, *zenanas* and *metis* (APCOM 2008). Transgender people have diverse sexual orientation and behaviors. Of an estimated 25 million transgender population worldwide, the prevalence of HIV in TG varies globally 8% - 68% (WHO 2011). Transgender people are among the groups most affected by HIV, particularly in Latin America and Asia and the Pacific. Despite scattered and small scale research, it can be estimated that there are possibly 9-9.5 million ‘trans’ people in the Asia Pacific region, among whom the HIV prevalence is alarmingly high. The care and attention towards the issue is overshadowed by the stigma, discrimination, marginalization and social exclusion meted out towards them and others affected by HIV.

In the contemporary world, the transgender identity is mostly confused with the transsexual, the process of gender reassignment, and one's self identification with the other binary gender identity. Transgender identities have not been limited to transsexual identities or those who identify oneself with the other binary gender category; it also includes all gender identities which differ from the normative gender role one is assigned at birth as well.

Transgender Communities in Asia and Pacific has been fighting for their rights for a long time. There have been unsuccessful attempts made on behalf of the LGBT groups in Association of Southeast Asian Nations (ASEAN countries) to include gender identity, expression, sexual orientation in the non-discrimination clause, but has been heavily criticized by the governments and civil society organizations. The “blueprint” report sets out four human rights priorities for transgender people in the region: *freedom from violence, freedom from stigma and discrimination, the right to the highest attainable standard of health care, and legal gender recognition* (the ability to change your identity documents to

reflect preferred gender). These basic demands stand in stark contrast to the experiences of many transgender people in the region. (Human Rights Watch: 2015)

In South Asia—where *hijras*, an identity category for people assigned male at birth who develop a feminine gender identity, have long been recognized culturally, if not legally—activists have pursued a related aim: the formal recognition of a third gender. Hijras’ traditional status, which included bestowing blessings at weddings, had provided some protection and a veneer of respect. But rather than being viewed as equal to others before the law, they were regarded as exotic and marginal—an existence dictated by boundaries and limitations, not rights. (Human Rights Watch: World Report 2016)

South Asian Countries including **India** and **Sri Lanka** are increasingly considering recognition of transgender identities as subjects of rights and citizenship. The statist and developmentalist deployments of the transgender category may generalize linear narratives of transition and stable identification with the “opposite” gender as defining features of trans identities, and even when they recognize possibilities beyond the gender binary such as a “third gender,” they tend to delimit and define such categories through a model of stable, consistent, and authentic identification that seeks to clearly distinguish transgender from cisgender and homosexual identities. (Dutta, A. & Roy R. 2014)

Hijras typically dress like women, but no physical transition or change is required to be inducted into the community. Found in Pakistan, India, and Bangladesh, the hijra are an old and marginalized group, whose members identify as men born with the souls of women. Hijras call themselves she-males and effigies, as well *askwaja sera*, or the “guards of the harem,” a title that recalls their historical role serving monarchs in the region. They are the keepers of many secrets, including the centuries-old language of Hijra Farsi. Yet, they remain outsiders. Many live apart from society and are excluded from most professions. In addition to panhandling and performing, prostitution is a common way for hijras to earn a living, a circumstance that arguably isolates them even further from mainstream society. Perhaps because of this marginalization, hijras have done their best to survive and create a supportive, close-knit community. This closeness has been facilitated by Hijra Farsi, which has a history that is as unique and mysterious as its speakers.

(The Secret language of South Asia’s transgender community: Retrieved from Quartz India <http://qz.com/662917/the-secret-language-of-south-asias-transgender-community/>)

In **Sri Lanka**, the term ‘*Nachchi*’ is used widely in place of Hijras to refer to transgender, especially to Male to Female Transgenders. However, Nachchis in Sri Lanka exhibit a wide range of differences in their social associations, behaviour and appearance compared to

Hijras. Nachchis in Sri Lanka associate and interact with other groups of the population freely. It is also observed that Nachchis tend to possess an acquired set of effeminate characteristics in order to attract same sex partners and to outcompete fellow nachchis and biologically female competitors. Historically the terms have been used to refer to cross dressers. In Sri Lankan society, heterosexual marriage is encouraged, divorce and separation is discouraged, and family violence as well as partner violence is invisibilized.

Multiplicities of Social Vulnerabilities of TG Populations:

Amalgamations of social, economic and legal factors push the TG populations and at the margins of the society. This aggravates the ignorance to safe sexual behavior, and limited job opportunities mostly push them into prostitution/ sex work as only form of acceptable earning. For example, the proportion of transgender people who sell sex is estimated to be up to 90% in India, 84% in Malaysia, 81% in Indonesia, 47% in El Salvador and 36% in Cambodia. (UNAIDS 2014) The report also mentions that HIV prevalence is up to nine times higher for transgender sex workers as compared to female sex workers.

The issues of **Stigma, violence, discrimination and marginalization** are everyday life features for TG populations. Transgender people are often socially, economically, politically and legally marginalized. Discrimination against transgender people may stem from multiple forms of stigma relating to gender identity, gender expression and perceived sexual orientation. In most countries transgender people are either unable to obtain gender-appropriate legal identification or are required to undergo genital surgery to do so. Some transgender people do not desire surgery to change their bodies, and a surgical requirement is a barrier to legal recognition. For people who desire such procedures, health insurance (either private or socialized) may not cover gender-affirming surgeries. Undergoing these surgeries may be costly, and a limited number of surgeons are trained to perform them. Absence of gender-congruent identity documents may limit access to a range of services, such as health-care and education, as well as employment and voting rights. Most jurisdictions offer no effective and enforceable legal protections against such discrimination. Thus, stigma, discrimination and lack of legally authorized or gender appropriate identity documents exclude many transgender people from civic participation, limit economic opportunities and result in poverty and marginalization that increase HIV vulnerability. (WHO Policy Brief 2015: Transgender People and HIV)

Violence motivated by **homophobia** and **transphobia** is often particularly brutal, and in some instances characterized by levels of cruelty exceeding that of other hate crimes.” In every region in the world, the U.N. continues to receive reports of physical and psychological abuse perpetrated against individuals perceived to be LGBT. In addition, LGBT people are targets for religious extremists, paramilitary groups, and extreme nationalists, and also risk being ostracized by their families and communities. The Gender Based violence (GBV) is a fundamental human rights violation and a serious public health concern. The GBVs are often based on social norms that emphasize on dominant notions of masculinity,

and are often seen as the root cause of transphobia and homophobia. Transmen in Asia are forced into marriage and sexual violence.

The Trans Murder Monitoring Project, an initiative that collects and analyzes reports of transgender homicides worldwide, recorded 1,731 murders of transgender people globally between 2007 and 2014. Many were of a shockingly brutal nature, sometimes involving torture and mutilation. Outright violence is not the only threat to the lives of transgender people. They are as much as 50 times more likely to acquire HIV than the population as a whole, in part because stigma and discrimination create barriers to accessing health services. Studies in the United States, Canada, and Europe have found high rates of suicide attempts among transgender people, a response to systematic marginalization and humiliation.

Several countries, including Malaysia, Kuwait, and Nigeria, enforce laws that prohibit “posing” as the opposite sex—outlawing transgender people’s very existence. In scores of other countries, transgender people are arrested under laws that criminalize same-sex conduct.

Human Rights Watch documented rights violations against Malaysia’s transgender women including arbitrary arrests, sexual assault, torture, employment discrimination, stigmatizing treatment by health workers, and a ban on sex reassignment surgery. Elsewhere in Asia, legal recognition of one’s preferred gender is possible, but it can require irreversible and invasive procedures. Japan, Singapore, South Korea, Taiwan, Hong Kong, and China all require sex reassignment surgeries and sterilization as part of the legal process – a humiliating provision often coupled with other discriminatory requirements such as mental illness diagnoses.

Some governments in Asia have started to include transpeople, predominantly transwomen in programmes that address GBV. For example, the government of Cambodia has recently involved Trans women to draft its National Plan of Action for Prevention of Violence Against Women. (Project DIVA report: 2015)

Transgender Sex Workers or **Nachchi in Sri Lanka**, as in other countries, have to undergo extreme police mistreatment as part of their everyday violence. Research on such violence has found how such police mistreatment was examined to show how the abuses reflect the intersectional nature of gendered victimization. This victimization is based simultaneously on gender expression and homosexuality of the Nachchi communities. From 2010 to 2012, the Women’s Support Group (WSG), a Colombo-based non-governmental organization (NGO) providing support and advocacy for lesbians, Gay, bisexual women and transgender people (LGBT). It documented experiences of violence and discrimination specific to LGBT people in Sri Lanka. This initiative, titled the Asia Action Research to Address Violence

Against Non heteronormative Women and Transgender People on the Basis of their Sexual Orientation, Gender Identity or Gender Expression, was part of a five-country project spearheaded by the International Gay and Lesbian Human Rights Commission (IGLHRC), an international organization advocating for the human rights of people who experience violence and discrimination on the basis of their sexual orientation, gender identity or expression. The key findings revealed the emotional violence meted out to the Lesbian, Bisexual, Gay or transgender community in Sri Lanka, due to their sexual orientation, gender identity or gender expression, and the main perpetrators of this emotional violence is from the family members. It is indicative of Sri Lankan society being subjects of patriarchal authority where heteropatriarchal norms are reinforced. (Women and Media Collective: 2014)

Social Exclusions- The lack of jobs, housing, education are all social factors that enhance the marginalization of Transgender communities. Transgender people routinely report that they are turned down for jobs and housing when it becomes evident that their appearance does not match the gender marker on their official documents. In addition to their non conforming gender expression, the stigma of HIV infections among the TG groups also aggravates their social exclusions. Research by the International Centre for Research on Women (ICRW) found the possible consequences of HIV-related stigma to be:

- loss of income and livelihood
- loss of marriage and childbearing options
- poor care within the health sector
- withdrawal of caregiving in the home
- loss of hope and feelings of worthlessness
- loss of reputation

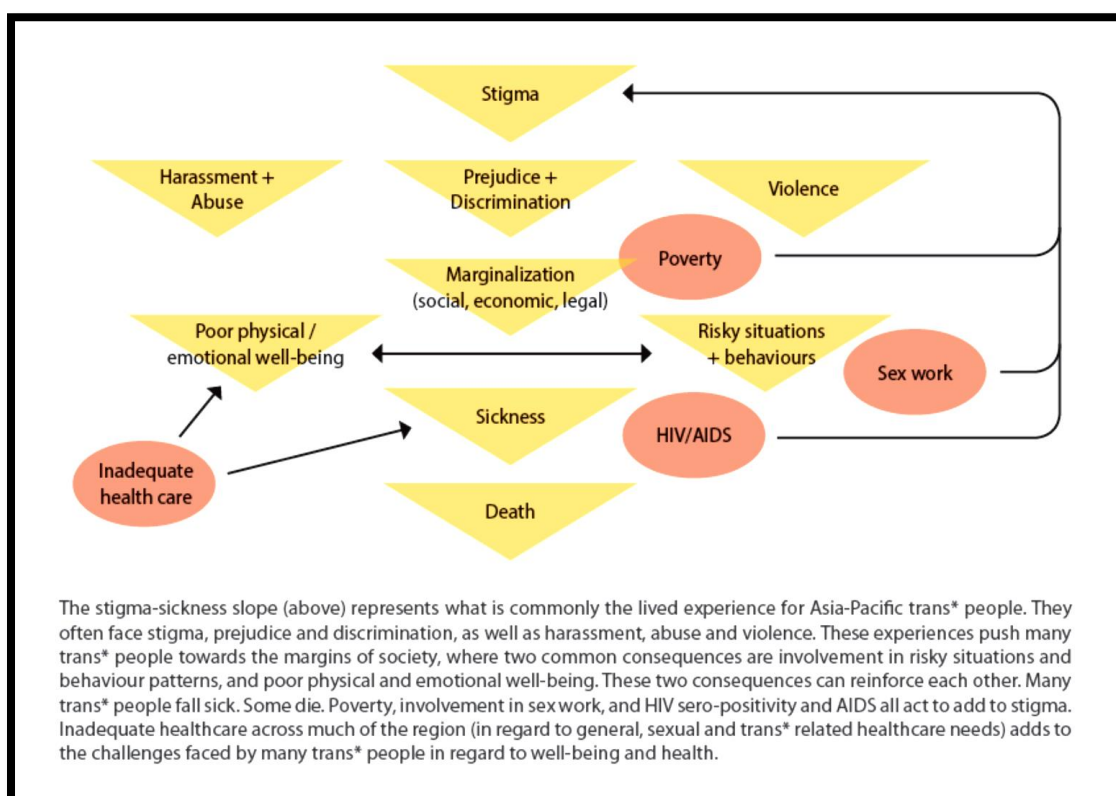
In Educational spheres transgender children and young adults face abuses in school settings ranging from sexual assault, to bullying, to being forced to attend a single-sex school or wear a uniform based on the gender marker assigned at birth. In Japan, junior high and high school students told Human Rights Watch that strict male/female school uniform policy that often do not allow children to change uniforms without a diagnosis of "Gender Identity Disorder" caused them extreme anxiety, leading to extended and repeated absence from school and even dropouts. Some said the country's legal gender recognition procedure, which mandates sex reassignment surgery, put pressure on them to undergo the full procedure before they became adults so that they could enter university or apply for jobs according to their gender identity.

In Malaysia, the Education Department of the Federal Territory (Kuala Lumpur) has an explicitly discriminatory policy that calls for punishment, including caning, suspension, and expulsion, for homosexuality and "gender confusion." Malta has become a pioneer in

recognizing transgender children’s right to education: following its April 2015 legal gender recognition legislation, the government launched comprehensive guidelines for schools to accommodate gender non-conforming students, including through addressing issues related to uniforms and toilets. (Human Rights Watch 2016)

Difficulties in obtaining official recognition that reflect an individual’s gender identity act as a hindrance to go about their daily lives and go through the complex web of medical verification, challenging to vote or even acquire a mobile phone. **Sexual harassment in workplace and public places** take away the dignity of individuals and reduce their abilities to engage in normal working opportunities.

It is a recognized fact that in addition to legal protection, the marginalized communities would thrive with provision of better housing, employment and educational facilities and would be led away from the high risk behaviors and suicide attempts that grip them.



Source: UNDP 2012: Transgender persons, Human Rights and HIV vulnerability in Asia And the Pacific

Religion plays a big role in many countries across Asia and the Pacific. Historically, gender identities have been hidden in the cultural and religious spheres, as they are not usually recognized as transfriendly spheres. However, the use of religion to repress LGBT communities has become a norm in the South Asian regions. Reports of trans people of many faiths and traditions exclude them from praying in their preferred position or place. At many instances, trans women have to dress up as men in order to be able to pray. The

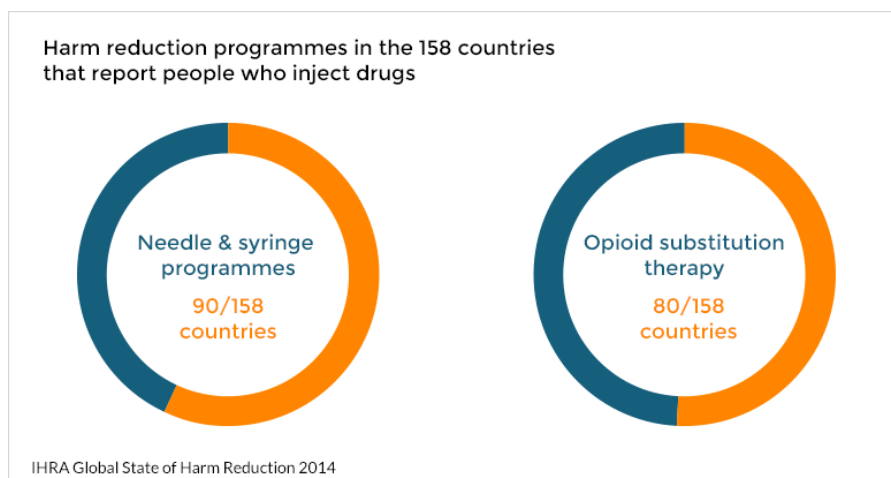
Human Rights Watch in Malaysia have reported on raids by the state religious departments and religious edicts from the fatwa council have eroded the right to bodily autonomy (Human Rights Watch 2014). The stigma and discrimination against them has been identified as a form of internalized religious phobia.

Transgender Healthcare and Behavior: Though the presence of transgender have a cultural history in the South Asian countries, the apathy and transphobia meted out to at present times has increased their marginalization in society. In Kuwait, transgender women told Human Rights Watch that medical doctors have reported them to police after noting the gender on their government-issued IDs does not match their appearance and presentation, effectively limiting their access to health care. (Human Rights Watch 2016) Marriage to a female was not uncommon, as it was the accepted social norm. Many TGs report a large number of male partners – commercial and non-commercial. The blurring of sexual preferences within these communities is coupled with the lack of awareness of safe sexual practice and the inconsistent use of condoms or lubricants: all of these factors putting the key groups at high risk for HIV (WHO SEARO 2010). There are high rates of unprotected anal sex among transgender women, which carries a high risk of HIV transmission. Several factors contribute to this. Stigma and discrimination, leading to low self-esteem and disempowerment, can make it harder for transgender people to insist on condom use.

Low self esteem and body issues result in increasing sexual risk behavior by the ‘trans’ population. Gender-changing hormones, which some transgender women use, can lead to erectile dysfunction, increasing the likelihood of taking the receptive role during sex. There are other social factors that make transgender people more likely to engage in high-risk sex. Studies have shown that some transgender people who want to affirm their gender identity through sex, or who fear rejection from sexual partners can be more likely to agree to unprotected sex. The stress of social isolation may also lead to a much higher rate of drug and alcohol use among transgender people that can affect their judgment of risk and make them less likely to use condoms (Averting HIV and AIDS: 2015). Condom use appears to vary according to the type of male partner. In some countries such as Sri Lanka and Thailand, the level of consistent/always condom use with regular male partners was lower than with non-regular male partners: 26% with regular conducted in 2001 in India showed that 39% had more than 10 partners in the past one month.⁴⁰ In Indonesia, the number of partners ranged from 1 to 4 (median) in the past week. Many MSM have multiple sexual partners of all types – regular, casual, commercial (paid) and paying.

Incidence of Drug use is a very common issue among transgender, who find it affordable and convenient to carry out gender enhancement by injecting themselves. This is based on the unavailability of health care services and the inhibitions of the TG population to approach the health care centers and dependence on the black market for getting hormonal medicines. Without proper guidance and counseling the populations become vulnerable to HIV transmissions through sharing needle and other risks. It is estimated that there are 12.2

million PWID worldwide, and around 1.65 million (13.5%) of this population are thought to be living with HIV. Four countries account for 63% of all people who inject drugs - [China](#), Pakistan, Russia and the [United States of America \(USA\)](#) - reflecting the seriousness of the HIV epidemic for PWID in these countries. HIV prevalence among PWID is highest in South-West Asia (29.3%) and Eastern and South-Eastern Europe (22.8%). The 2011 Political Declaration on HIV and AIDS called for a 50% reduction in HIV transmission among PWID by 2015. Despite new diagnoses among this group declining by 10% between 2010 (110,000) and 2013 (98,000), it is highly unlikely that the 2015 target will be met (UNODC: 2015). Harm reduction programmes go a long way in preventing the effects of drug abuse and spread of HIV because they provide clean needles to drug users, and offer substitution medicines like methadone as an alternative to injecting drugs. Despite their resounding success in various settings worldwide, of the 158 countries that report PWID, only 90 have NSPs, and 80 provide OST. HIV preventive care desperately needs domestic government support in Harm reduction programs, because at present most of the support comes through international funds in this respect.



Source: IHRA Global State of Harm Reduction 2014

(Retrieved from <http://www.avert.org/professionals/hiv-social-issues/key-affected-populations/people-inject-drugs>)

Transgender peoples' access to health care is further complicated by the fact that their experiences have been classified as a mental disorder, meaning they must accept this stigmatized diagnosis when accessing health services. The forceful **Reparative Therapy** from psychologists and pressure from families create worse health issues for the 'trans' population, often leading to psychological stress and suicide. (Chandimal, D. 2015)

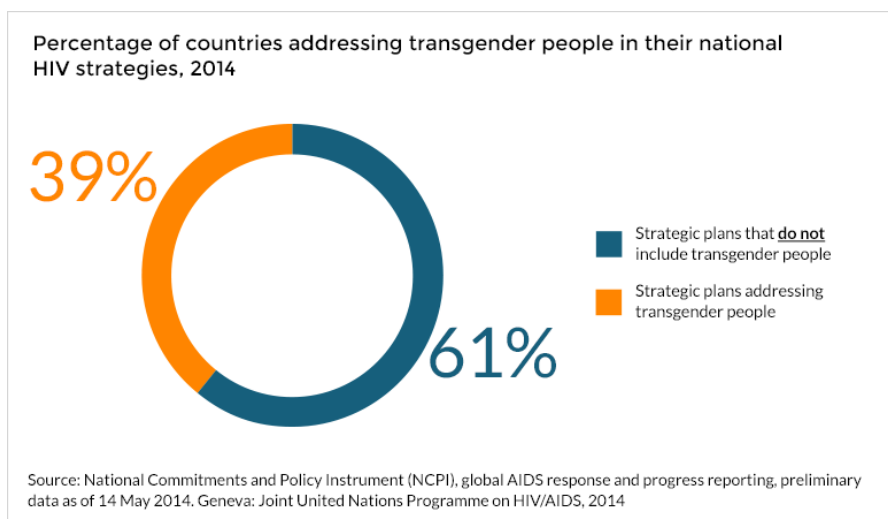
The World Health Organization (WHO) has proposed that references to transgender people in their health diagnosis literature be placed in a chapter called 'conditions relating to sexual health' and removed from the list of mental disorders. This has been welcomed by the global transgender community, clinicians and researchers (Winter. et al, 2016) The APCOM

Policy brief on South Asia mentions the high prevalence of harassment and extortion by the police meted out to the vulnerable groups in South Asia. This harassment includes confiscation of condoms as evidence for sex work or illegal same sex conduct, raids in places where HIV education is given out or confiscation of HIV related materials. The legitimization of discrimination and unethical treatment by health care workers, including aversion ‘therapy’ for homosexuality and maintaining diagnostic criteria that stigmatize transgender status as a ‘disorder. The multiple healthcare needs of the TG population are usually ignored by the mainstream health officials, who are often unprepared to address their unique healthcare needs.

Sri Lankan incidences of **superstitions beliefs** and the use of black magic are not unheard of. many instances of trying to cure a TG of his ‘psychological problems’ have resulted in attempts of suicide and other stress disorders among the TG population.

Legal challenges: The working definition of the World Health Organization (WHO) notes that sexual rights uphold human rights as stated in national laws, international human rights documents and other consensus documents and include rights of all persons, free of coercion, discrimination and violence, to the highest attainable standard of health in relation to sexuality, including access to sexual and reproductive healthcare services. (Women and Media Collective, WMC: 2015). The laws and policies in SEAR countries are identified as major barriers to TG communities. In 2015, 76 countries still had laws that prohibit same-sex sexual activity, which can also affect transgender people, hindering their ability to access information about HIV risk and prevention. (ILGA: 2015) “MSM and transgender people in many countries in South Asia experience marginalization, violence, harm and even death, either because of their lack of access to health, or directly as a result of violence. Rather than providing protection to key HIV-affected populations (those most vulnerable to HIV, such as sex workers, MSM, transgender people, prisoners and migrants), many governments enact laws or permit behaviors that contravene international human rights standards, such as criminalizing same-sex activity, enforcing laws that prohibit gender nonconformity and criminalizing sex work” (UNDP: 2013)

Across the South Asia sub-region, various forms of offence are used to target transgender people for harassment, extortion, detention, assault and rape. In many cases transgender people have reported being detained for the purpose of extorting payments, but not prosecuted. These offences include prostitution, vagrancy and public nuisance offences, and indecent behavior in public, breach of the peace, obscenity, and soliciting (APCOM: 2010).



Source: Retrieved from <http://www.avert.org/professionals/hiv-social-issues/key-affected-populations/transgender>

As in other South Asian countries, politicians and other public figures in Sri Lanka often dismiss same-sex relations as a Western way of life in order to justify the continued criminalization of sexual activities between consenting adults even in private spaces. For example in August 2008, the Sri Lankan government hosted the 8th International Conference of AIDS in the Asia Pacific (ICAAP). LGBT people and sexual minorities in general are more vulnerable and invisible in Sri Lanka. Their vulnerability and invisibility are compounded when sexuality intersects with membership in another disadvantaged group. For example, many lesbian, gay, bisexual and transgender (LGBT) groups report a lack of Tamil membership. The human rights crisis facing the country creates a complex context in which sexual minorities find it even more difficult to effectively advocate for their rights. (Women and Media Collective 2014)

Transgendered men and women in Sri Lanka are denied the right to recognition by the State due to the fact that there is no structured system which allows transgender men or women to alter the category of 'sex' on their Birth Certificate or National Identity Card. This has been left to the discretion of the medical practitioner who in effect, risks his license if he/she performs sex altering surgery on a client whose birth certificate notes his/her sex at birth. As there is no legal provision to change one's sex, people are advised to first change their birth certificates and only then go through with sex altering surgery; in effect putting the cart before the horse (NGO Shadow Report, 2011)

Human rights lawyers in Colombo have said that the while everyone is entitled to equal protection under the law in Sri Lanka, transgenders do not come under the equal protection of law due to the existence of archaic laws due to the moral dimensions existing in society.

As the existence of transgendered persons in Sri Lankan society is not taken into consideration in designing healthcare, there is a lack of information on services such as sex reassignment operations by public health providers. In Sri Lanka, health services are provided by public hospitals free of charge or at subsidized rates. However, services on sex reassignment are not made available in these hospitals (On Universal Access to Sexual and Reproductive Rights: 2015)

The APCOM report on Legal environments, Human rights and HIV related issues recognizes incidents of violence against MSM by the police and security forces in Sri Lanka. The Vagrants Ordinance of 1842 has reportedly been used to harass MSM and male sex workers. Transgender people have had their movements restricted in public spaces, and there have been instances of prolonged blackmail. Outreach workers distributing condoms were arrested and harassed by police in December 2005. More recently, outreach workers have adjusted approaches, with police being cooperative where condom distribution is not overt to the broader community.

Moving forward – Some laudable advances have been made in South Asia to promote and protect the human rights of transgender persons. The policy brief of the UNDP and APCOM Report identifies India and Nepal as the only countries in the South Asian Region that have somewhat provided a legal platform to the oppressed groups. Recent court judgments in India, Nepal and Pakistan place an emphasis on the role of the law in assuring equality, human dignity and inclusiveness. Some legal measures have been taken to recognize diversity of gender identities in Nepal and India, for example in allowing electoral registration as a third sex. These events signal a trend towards a more protective legal environment. These improvements in the legal status of MSM and transgender people will support efforts to scale up HIV responses.

In an April 2014 decision, India's Supreme Court for the first time recognized a third gender category, giving transgender individuals formal recognition, legal status, and protection under the law. The Court also directed India's federal and state governments to designate transgender people as constituting a legally recognized marginalized group – which offers them access to social welfare programs and affirmative action in university admissions and state employment.

This year also marked the first time transgender persons in India were able to choose their identity as "other" on their voter identification card, in accordance with an Indian Election Commission decision. For India's ongoing general election, over 28,000 voters enrolled under this category. Pakistan's transgender community was granted the right to vote in a

2011 Supreme Court decision that was first implemented in 2012, and several transgender candidates ran in Pakistan’s 2013 general election.

Many transgenders who identify as women in India are forced into sex work since they are unable to obtain employment in other sectors. However, India’s transgender community has also seen progress this year in its ability to choose professions. In an unprecedented move, India’s Home Guards accepted six transgender women as cadets in April. The transgender cadets will train with a male unit, but are being provided separate changing facilities and allowed to dress as they like when not training. (Transgender Rights: Progress in South Asia 2014)

Sri Lanka has two NGOs recognized in the APCOM report that advocates for Transgender rights- **COJ**, which provides services and safe space to gay-identifying men and Men who have sex with Men, and focuses on decriminalization and providing support, outreach, and HIV education services; and **Equal Ground**, which focuses on advocacy to repeal the Penal Code prohibition of homosexual activity and organizes social events in Colombo. Family Planning Association Sri Lanka provides counseling and HIV prevention for MSM.

Then Nepal’s Supreme Court, in a sweeping 2007 ruling, ordered the government to recognize a third gender category based on an individual’s “self-feeling.” The ruling rested largely on the freshly minted Yogyakarta Principles—the first document to codify international principles on sexual orientation, gender identity, and human rights. Armed with the ruling, activists successfully advocated with government agencies to include the third gender category on voter rolls (2010), the federal census (2011), citizenship documents (2013), and passports (2015).

Similarly, in 2009, the Supreme Court in Pakistan called for a third gender category to be recognized, and in Bangladesh, the cabinet issued a 2013 decree recognizing hijras as their own legal gender. In 2014, India’s Supreme Court issued an expansive judgment recognizing a third gender, affirming “the right of every person to choose their gender,” and calling for transgender peoples’ inclusion in state welfare programs.

The community can play a major and direct role in influencing the law and policy making in countries. In Sri Lanka, Bangladesh, Nepal and India a variety of NGOs and CBOs are involved in advocacy for changes in laws and policies. Services conducted by the MSM community-based organizations (CBOs) include peer-led education, counseling on safer sexual behaviors, condom and lubricant use, reducing number of partners, and STI counseling, testing, and referrals (Alliance Lanka: 2011). The report identifies HIV prevention care and support interventions have commenced in five districts through national Global Fund Round 9, with potential to continue until 2015.¹⁷ A recent assessment found that MSM community groups in Sri Lanka are not consulted adequately in national processes related to HIV.

In Bangladesh, Hijra/transgender people have been recognized as 'Third gender' by the government, while in Nepal, work with the NHRC and national stakeholders helped provide the community with evidence and political advocacy for the country to recognize a 'Third gender' category and to introduce "others" in the citizenship and immigration card in 2013. Further, sexual orientation and gender identity issues were included in school level curricula and the National Human Rights Commission institutionalized a position of Human Rights Officer dealing with MSM/transgender complaints. Exposure visits for community-based organizations from Afghanistan, Bhutan, India, Nepal and Pakistan with their peers have increased knowledge sharing on organizational governance and advocacy strategies. After a visit to Nepal, MSM and transgender people have **formed the first Bhutanese MSM and transgender community group**. (UNDP, 2016)

Case Study: Tamil Nadu Transgender Welfare Board, India

In Tamil Nadu, a southern state of India, transgender women, or 'Aravanis', have a history that goes back centuries. However, in the present day they face many of the structural factors that put transgender people at risk of HIV. One study in India found that 46% of transgender women reported being subjected to forced sex. Many Aravanis also consume alcohol excessively, to "manage rough clients" or "forget worries".

In 2008, the state government established a 'Transgender Welfare Board' to address the problems faced by the community. The scheme ensures access to education, providing different forms of income generation such as land, and putting housing and health measures in place. Many transgender people have now been issued with official identity cards stating their gender as 'Aravani', addressing the barrier to healthcare faced by transgender people who don't have official identification. They also run an official 'Transgender Day', promoting the culture, tradition and healthcare of transgender people, and therefore self-esteem.

Tamil Nadu is also the only state to provide free sex reassignment surgery. States in India such as Tamil Nadu that have a history of transgender people organizing groups to advocate for their own rights, tend to also have the highest standards of care and the most community-based organizations that meet transgender people's needs. This demonstrates that while the welfare board provides a good example of state-level practice that could be replicated across South Asia, there is also a real need to support the formation and organizing of groups of transgender people who can lead the way in addressing their own HIV-related needs.

(Retrieved from- Transgender people, HIV and AIDS: <http://www.avert.org/professionals/hiv-social-issues/key-affected-populations/transgender>)

The political and legal environments of most of the countries remain hostile towards the Transgender and MSM populations, as well as towards the populations suffering from HIV. South Asian Region continues to have repressive laws or at minimum fails to fulfill the human rights of the vulnerable section of population. However, things are moving forward gradually with the interventions of International agencies and domestic NGOs and CBOs. The **Yogyakarta Principles** are identified as principal guiding lines on tackling the human

rights issues of LGBT populations. It is based on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity; it is a set of principles relating to sexual orientation and gender identity was developed at a meeting of the International Commission of Jurists, the International Service for Human Rights and human rights experts from around the world at Gadjah Mada University on Java from 6 to 9 November in 2006. It is intended to apply international human rights law standards to address the abuse of the human rights of lesbian, gay, bisexual and transgender (LGBT) people, and (briefly) intersex people. The Principles were developed to enhance the individual sovereignty of subjective identity, a principal articulated in a host of international human rights laws that protect the authentic reality of individual identity and sovereignty from the legal fictions and social constructs of national or state collectivist ideologies. The issue is further articulated by the struggles of indigenous peoples, gender and religious identity communities worldwide. (Human Rights Watch: 2007)

All available data and studies call for a more comprehensive and delicate handling of HIV related issue among vulnerable groups. This calls for governments adopting national HIV strategies that support advocacy and improvements to the enabling legal environment in line with best practices in HIV prevention, treatment, and care guidance documents developed by UNAIDS, WHO and other global strategies developed by global funding mechanisms such as the GFATM (SOGI Strategy) and according to publications by the World Bank, WHO, and others. (Baral S. et al, 2011)

The laws affecting transgender persons need to be discussed in the light of the history of laws, their utilization against transgender persons as well as the attitudes of law enforcement officers, lawyers and society. (Chandimal 2015) The recommendations in Sri Lanka takes into account different factors, for example the need for discussing issues in local languages at the grass root levels are seen as means of influencing governmental and institutional structures for LGBTIQ population. On more than one instance it has been researched and found that it is the *cultural construction* of homosexuality and other 'trans' populations that contributes towards the manifestation of abuse in Sri Lanka and other SEARO countries. The oppression within a vacuum of only genes or sexual orientation is too simplistic, and the experience of oppression is distinct under each category of 'trans' people, all of which need to be studied in greater detail and handled more delicately. (Nichlos, A. 2010). The doing away of criminalizing non conformist gender orientations is crucial to the progress of the human rights of TG communities. It will help transgender people to leave behind a life of marginalization and enjoy a life of dignity. A simple shift toward allowing people autonomy to determine how their gender is expressed and recorded is gaining momentum. (Human Rights Watch 2016) A paradigm shift of Legal rights and social conventions only will uplift the Transgender population and make it a part of the mainstream society.

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