GLOBAL COMMISSION ON HIV and the LAW

SELECTED BIBLIOGRAPHY

RISK + STIGMA: TRANSGENDER PERSONS
Selected Bibliography

Risk + Stigma: TRANSGENDER PERSONS

HIV and the Law: Risks, Rights & Health

September 2012
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The discrimination of transgender people violates their basic rights of non-discrimination and manifests in disproportionate HIV risk and consequent disease burden. This paper focuses on transgender women and situates them within the International Bill of Human Rights. While these instruments do not specifically cite sexual orientation or gender identity, interpretations subsequent to their enactment indicate that discrimination against transgender people, or derogations of their rights are violations of at least the spirit of international human rights norms, if not the letter. States around the world are reflecting and entrenching this expansion of human rights in their national legislative and judicial decisions.

Transgender women demonstrate disproportionate risk for HIV, driven in part by sexual practices that relate to their gender identities. Other individual-level risk factors for HIV risk include mental health issues, physical abuse, and higher incarceration rates. Risk factors that transcend individual level practices have also been associated with HIV risk among transgender women including economic marginalization, social isolation, unmet health care needs, and low HIV-related knowledge.

Most transgender women experience lives filled with ongoing social stigma that supports the discriminatory attitudes that manifest as human rights violations and continued marginalization. At the social and structural levels, discrimination and social marginalization limit access to information, services and economic opportunities. Lack of access to legal identification cards has been associated with barriers to health care, indiscriminate arrests of transgender women and policy brutality. The denial of care and government-sponsored brutality both function to limit the provision and uptake of HIV preventive, treatment, and care services.

Social exclusion need not rise to the level of targeted violence to potentiate HIV risk status among transgender women. A Canadian project demonstrated the phenomenon of erasure of transwomen from the conscious realm producing a health system in which a trans patient or client is seen as an anomaly limiting quality of health services and uptake of services. While this study was completed in Canada, the lessons of marginalization transcend this country. In international human rights schemes, the state is intended to not just respect and protect human rights of its citizens, but also to fulfill them; hence erasure is a rights violation in the state’s failure to fulfill these rights.

When transgender women seek employment, they experience systematic exclusion from the workforce because of deeply ingrained stigma and discrimination and also because their gender presentation does not match their documents. This employment discrimination severely limits their economic opportunities. In combination with systematic prohibitions from state-sponsored social support mechanisms including social welfare programs, transgender people have turned to sex work in multiple settings. In an international study, over 80% of transgender people murdered were working as sex workers. Because sex work is criminalized in many settings,
transgender women who do this work also face arrest, detention, and police abuse, which are additional known risk factors for HIV transmission.

Discrimination has been associated with mental health problems for transgender people. Mental health issues are well established risk factors for higher risk sexual practices among sexual minorities giving further credence for the role of health outcomes as a result of social exclusion.

The legal environments of many countries remain either repressive of transgender people, or at minimum fail to fulfill their human rights. The paper makes the following recommendations to governments, using the International Bill of Human Rights, the Yogyakarta Principles and the June 2011 resolution as guides:

- Examine the ways in which their own laws embody the non-discrimination ideas of international human rights treaties and be encouraged to enact explicit non-discrimination protections for trans and LGB people.
- Urgently remove criminal penalties related to sexual orientation and gender identity where those exist.
- Enact legal protections and prohibit discrimination with functional mechanisms of redress and compensation on the grounds of gender identity and sexual orientation, particularly in the areas of reducing employment discrimination, increasing access to health and wellness services, education, welfare and housing opportunities.
- Work to reduce barriers to receiving legal recognition for purposes of identification documents including passport and other social services.
- Adopt national HIV strategies that support advocacy and improvements to the enabling legal environment in line with best practices in HIV prevention, treatment, and care.
- Support civil society in the response to HIV among transgender women.
## Judgments


<table>
<thead>
<tr>
<th>Nature &amp; Scope of Authority</th>
<th>Rulings of the European Court of Human Rights interpreting the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) are binding on signatories to the Convention and are enforceable by the Council of Europe.</th>
</tr>
</thead>
</table>
| Facts & Background Law     | ● Goodwin is a post-operative male to female transgender person who filed a complaint regarding gender-based discrimination in several aspects of her life, including: in the workplace; in relation to contributions to the National Insurance system; and in her ability to marry, as she was prevented from marrying a man because she was still legally male.  
● ECHR Art. 8 provides that everyone has the right to respect for their private life, and there shall be no State interference with that right except as is necessary in a democratic society in the interests of national security, public safety or economic well-being of the country. |
| Issue                      | Has the State failed to comply with a positive obligation to ensure the right of the Applicant, a post-operative male-to-female transsexual, to respect for her private life, in particular through lack of recognition given to her gender re-assignment? |
| Holding                    | Yes. State respect for gender identity is a human right under the ECHR, and such respect includes state recognition of gender re-assignment in all of the areas mentioned in the complaint. |
| Rule, Application, and Judgment | The very essence of the ECHR is respect for human dignity and human freedom. The notion of personal autonomy is an important principle underlying the interpretation of the guarantees set forth in Art. 8, and this includes ‘the right to establish details of their identity as individual human beings. In the twenty first century the right of transsexuals to personal development and to physical and moral security in the full sense enjoyed by others in society cannot be regarded as a matter of controversy.’ The court finds the State has failed to respect Applicant’s right to a private life in breach of Art. 8. The court also finds a breach of Art. 12 (the right to marry). The court declines to award damages but directs the U.K. government to implement such measures as it considers appropriate to secure the rights of transsexuals to respect for private life and right to marry. |


| Nature & Scope of Authority | The Federal Court in Canada has appellate jurisdiction to review of decisions of the Immigration and Refugee board. Federal Court decisions are appealable to the Canadian Supreme Court. |
### Facts & Background Law
- Applicant is a cross dressing homosexual man who suffered violent attacks in his native Mexico based on his sexual orientation and transgender status. He fled to Canada and was thereafter diagnosed as HIV-positive. He sought refugee status in Canada based on his membership in particular social groups, namely homosexual men living in Mexico, cross dressing men, and persons living with HIV.
- Canada’s Immigration and Refugee Protection Act defines a ‘refugee’ as a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality or membership in a particular social group, is unable or by reason of that fear unwilling to avail himself of the protection of his home country. A ‘person in need of protection’ is someone whose removal to his home country would subject him personally to a risk to life or risk of cruel and unusual treatment.
- The Immigration and Refugee Board found that Mexico offered sufficient protection against homophobia and had in place HIV/AIDS treatment services, and that Applicant had not made adequate attempts to seek protection from Mexican authorities; accordingly, the Board denied Applicant’s request for asylum.
- Applicant sought judicial review of the Board’s decision.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Holding</th>
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<tbody>
<tr>
<td>Did the Board adequately consider the ability of Mexico to protect</td>
<td>No, the Board did not reasonably examine Applicant’s refugee claim, as it</td>
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<tr>
<td>individuals such as the Applicant who is a cross dresser and</td>
<td>considered only Mexico’s adequacy in providing HIV/AIDS treatment and</td>
</tr>
<tr>
<td>transgendered individual?</td>
<td>protecting individuals against homophobia. There was evidence before the</td>
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<td></td>
<td>Board to alert them to the fact that Applicant’s identity was not only</td>
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<tr>
<td></td>
<td>a homosexual man but also a cross dresser and transgendered person.</td>
</tr>
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</table>

| Rule, Application, and Judgment                                      | Applicant’s specific identity as cross dresser and transgendered        |
|---------------------------------------------------------------------| individual must be considered in assessing adequacy of state protection.|
|                                                                     | The decision of the Board is set aside and the matter referred to a     |
|                                                                     | different panel of the Board for redetermination.                       |


### Case
**In re Change of Name and Correction of Family Register, 2004Seu42, Jun. 26, 2006 (S. Kor.)**

<table>
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<tr>
<th>Nature &amp; Scope of Authority</th>
<th>Decision of the Supreme Court of South Korea, binding throughout the country.</th>
</tr>
</thead>
</table>

| Facts & Background Law     | An individual, recorded as female on the family register but who has undergone |
|                           | sexual reassignment surgeries and is living as a male, applies for change of |
|                           | name and for correction of the family register to reflect his appropriate gender.|
|                           | The application is denied, the lower court finding no provision in the Family |
|                           | Register Act for changing the gender recorded at birth. The individual appeals.|
The Family Register Act, Art. 120, provides that if there is a statement on the register ‘which is not permissible by Act’ or there is an error or omission in the statement, the interested person may apply for correction after obtaining permission from the court.

### Issue
Did the lower court err in refusing to permit a change of gender to be recorded on the family register?

### Holding
Yes. The judgment of the court below is reversed and the case remanded for redetermination.

### Rule, Application, and Judgment
- There are multiple factors in determining a person’s gender, including social and psychological factors, as well as biological ones.
- A person who persistently has a feeling of discomfort and inappropriateness about his or her biologically assigned gender, and who has adapted to a different gender mentally and socially and undergone reassignment surgery, should be permitted a legal change of gender.
- Even though a particular status relationship is recorded on the family register, if there is obvious evidence that the statement of the record does not match the true situation, the record shall be corrected.
- An applicant may apply the procedure set forth in Art. 120 of the Family Register Act to have the register corrected to reflect his current gender identity. Unless he is allowed to do so, the statement on the register will not correspond to his actual gender, and ‘he might be treated as socially abnormal person, deprived of opportunities to be employed, which eventually might infringe on his or her fundamental constitutional rights.’

### Notes

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**Case**  

**Nature & Scope of Authority**  
Judgment of Supreme Court of Nepal, binding throughout the country.

**Facts & Background Law**
- The heads of four NGOs advocating for the rights of sexual minorities in Nepal sue the government to obtain official recognition of lesbian, gay, transgender and intersex people. They seek an order of the court directing the government to grant citizenship certificates indicating an accurate gender identity, and to repeal all discriminatory laws and/or pass new laws to guarantee rights for homosexuals and ‘third gender’ persons.
- The Interim Constitution of Nepal, 2063 [2006], guarantees the right of every person to life, liberty and dignity (Art. 12), and to equal protection of the laws and freedom from discrimination on grounds of sex, race, caste and other factors (Art. 13). The Constitution further provides for abolition of discriminatory laws (Art. 33), and guarantees social justice (Art. 34).

**Issue**
Has the government of Nepal discriminated in its treatment of citizens on grounds of sexual orientation and gender identity?

**Holding**
Yes. The government has violated the constitution of Nepal and various human
rights treaties to which it is a party. The government is directed to make necessary changes to the law in order to enforce non-discrimination against persons based on sexual orientation and gender identity.

**Rule, Application, and Judgment**

- Because this lawsuit constitutes public interest litigation, the petitioners need not establish that they have personally been injured in order to permit them standing to sue.
- The court notes that in Nepal, as elsewhere in the world, homosexuals and transgender persons have been subjected to violence, harassment, arbitrary detention, discrimination and stigmatization, and public policy does not specifically prevent or penalize such actions.
- The Constitution of Nepal guarantees equality for all citizens; this includes third gender persons. The State should recognize the existence of all natural persons including ‘people of third gender other than men and women.’ The right to privacy is also a fundamental right, and the issue of sexual activity falls under the definition of privacy. It is up to the individual, not to other individuals, the state, or the legal system, to determine his/her own gender identity.
- Current legal provisions with regard to such things as marriage, citizenship certificates, passports and other matters, have failed to acknowledge the existence of persons of the third gender. These legal provisions, and others like them, restrict third gender persons from enjoying fundamental rights guaranteed by the Constitution and international human rights conventions. The provisions are thus arbitrary, unreasonable and discriminatory, and the government’s enforcement of such provisions is likewise arbitrary, unreasonable and discriminatory.
- The Court orders the government ‘to make necessary arrangements towards making appropriate law or amending existing law’ to ensure equal enjoyment of rights by homosexuals, transgender and intersex persons. The court further holds that all persons should have an equal right to marry and cohabit with partners of their own choosing, and it directs establishment of a committee to study the issue of same-sex marriage and partnership.

**Notes**

English translation of the judgment is available at:


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**Case**

*Re Kevin (Validity of Marriage of Transsexual), (2001) 28 Fam LR 158 (Family Court of Australia), aff’d, (2003) 30 Fam LR 1 (Full Court of the Family Court of Australia)*

**Nature & Scope of Authority**

The Family Court of Australia has original and appellate jurisdiction over family law matters. The judgment of the Full Court is binding throughout Australia, except Western Australia which has a separate Family Court.

**Facts & Background Law**

- Petitioner Kevin is a transgender person who was born with female physical characteristics but always considered himself to be male. He underwent hormone therapy and a series of gender reassignment surgeries in 1997-98 and obtained a new birth certificate in October 1998, on which his sex was shown as male.
- Kevin and his wife Jennifer married in August 1999 and applied for a declaration of the legitimacy of the marriage. The validity of the ceremony was challenged by the Australian Attorney-General; under the national Marriage Act, valid
marriages are those between a ‘man’ and ‘woman.’

- The court noted the following facts: At the time of the marriage, Kevin’s male secondary sexual characteristics were such that he would have been subject to ridicule if he had attempted to appear in public dressed as a woman. He was eligible to receive an Australian passport showing his changed name and stating his sex as male. He had been treated as man for a variety of social and legal purposes and accepted as a man, in full knowledge of his circumstances, by family, friends and work colleagues. Psychiatric examination of Kevin showed him to be an intelligent, emotionally warm man who is psychologically male, and this has been the situation all of his life.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Does a female-to-male transgender meet the definition of a male person for the purposes of the Australian Marriage Act?</th>
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<tbody>
<tr>
<td>Holding</td>
<td>Yes. For the purposes of the Australian Marriage Act, post-operative transgender persons are male or female according to the assigned post-surgery gender. The marriage in question is held valid.</td>
</tr>
</tbody>
</table>

### Rule, Application, and Judgment

- There is no rule or presumption that a person’s gender for purposes of marriage law is to be determined by reference to circumstances at the time of birth.
- Unless the context requires a different interpretation, the words ‘man’ and ‘woman’ when used in legislation have their ordinary contemporary meaning according to Australian usage; in Australia, post-operative transsexuals are considered as men or women in accordance with their sexual reassignment.
- In determining the gender of a transsexual person, courts should weigh the full range of relevant factors, including biological and physical characteristics at birth (including gonads, genitals and chromosomes); the person’s life experiences, including the sex in which he or she is brought up and the person’s attitude to it; the person’s self-perception as a man or woman, among others.
- Kevin is a post-operative transgender man, and fuller consideration of all factors points toward his gender identity as a man; thus, for the purposes of the Marriage Act, Kevin is a man and the marriage between Kevin and Jennifer is valid.
- The Full Court explicitly rejected consideration of the applicability of this decision to pre-operative transsexual persons: ‘This leaves the more difficult question of the position of pre-operative transsexual persons. As we have said, this case does not require us to determine this question. In all of the decided cases to which we have referred their position has been distinguished from post-operative transsexual persons and comments have been made to the effect that this is a matter for Parliament to determine . . .. The solution is not, of course, solely in the hands of the Federal Parliament. There has been greater interest within most of the States and Territories and for many purposes it is the law of the States and Territories that most affect transsexual persons.’

### Notes


Along with the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, this multilateral treaty is a core instrument of what is known as the international bill of rights.

Among its many guarantees are the right to life (Art. 6), the right to be free of arbitrary or unlawful interference with privacy (Art. 17), and the right to equal protection of the law without discrimination on any ground such as race, color, sex, language religion, political or other opinion, national or social origin property, birth or other status (Art. 26).

<table>
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<tr>
<th>Regulation</th>
<th>Identity Screening Regulations, C.R.C. SOR/2007-82 (Can.)</th>
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</thead>
<tbody>
<tr>
<td>Nature, Scope &amp; Source of Authority</td>
<td>This regulation was promulgated by the Governor General in Council, on the recommendation of the Minister of Transport under the authority of the Canadian Aeronautics Act. Applicable throughout Canada.</td>
</tr>
</tbody>
</table>
| Substance | • Sections 1(2)(a) and 1(3)(a) require that, in order to take a domestic or international flight originating or arriving in Canada, a passenger must present a government-issued photo identification document showing the holder’s name, date of birth and gender.  
• Section 5(2)(a) requires an air carrier to screen each passenger at the boarding gate by comparing the passenger against the required identification.  
• Section 5.2(1)(c) prohibits an air carrier from transporting a passenger if ‘the passenger does not appear to be of the gender indicated on the identification he or she presents.’ |

<table>
<thead>
<tr>
<th>Statute</th>
<th>Laws of Guyana, Summary Jurisdiction (Offences), Ch. 8:02, Sec. 153(1)(xlvi)</th>
</tr>
</thead>
</table>
| Substance | • The following acts are defined as criminal offenses, subject to punishment by fine: a man appearing in public in female attire, or a woman appearing in public in male attire, if done ‘for any improper purpose.’  
• This section appears in a portion of the Guyana criminal statutes under the heading, ‘Minor Offences, Chiefly in Towns.’ |
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<td><strong>Nature, Scope &amp; Source of Authority</strong></td>
<td>The Constitution is the primary law of the land, binding throughout South Africa.</td>
</tr>
<tr>
<td><strong>Substance</strong></td>
<td>The South Africa Bill of Rights, part of its Constitution, includes a broad equality provision in Sections 9. Section 9(3) prohibits discrimination on a wide variety of specified grounds, including gender, sex and sexual orientation.</td>
</tr>
</tbody>
</table>
This report examines the health and human rights challenges faced by female, male and transgender sex workers in Botswana, Namibia and South Africa. The criminalization of sex work in these three countries leaves sex workers vulnerable to sexual and physical abuse and extortion from law enforcement officers, and the lack of safe and supportive working conditions renders them particularly vulnerable to HIV infection. Further criminalization of same-sex activity compounds the danger for male and transgender sex workers, and these populations face physical and sexual violence and extortion demands from police. Transgender people also face taunting, humiliation and violence from the general populace and barriers to accessing nonjudgmental health care appropriate to their particular needs. Some transgender sex workers reported that black market hormones and contraceptive pills are used to avoid accessing mainstream health care services, out of fear of stigma and hostility from doctors; these treatments were self-administered without medical supervision or warnings about possible side effects.

The report documents widespread human rights abuses against sex workers but also describes innovative organizing tactics among the workers to promote advocacy for improved living, working and health conditions in these three countries. While progress has been made in expanding HIV/AIDS treatment and care to female sex workers, male and transgender workers have been largely ignored.

Commissioned by WHO, this report analyzes interviews with civil society representatives from 27 countries and 5 continents to present MSM and transgender perspectives and preferences on HIV testing and treatment. The results are broadly organized into two themes: access barriers, and preferences in delivery organization. Issues addressed include the consequences of stigma in the health care setting and the need for comprehensive and holistic health care services for MSM and transgender persons. Stigma in health care settings can result in fear and reticence in accessing these services. When combined with fragmented and/or incomplete delivery of health care services, stigma thus erodes MSM and transgender health in general, as many health conditions are not addressed at HIV-specific health care delivery sites.

The report lists five primary barriers to accessing HIV prevention and treatment services: homophobia/transphobia, HIV stigma, criminalization of transmission and other repressive laws and policies, safety issues, and insensitivity among service providers.

Transgender persons who participated in the study expressed a strong need to address transgender sexual health and wellness concerns as different from those of gay men and other MSM. They provided two primary
recommendations. For health care providers in dealing with transgender patients, a discussion of sex, sexuality and the bodies of transgender persons is a prerequisite to initiation of any HIV/STI prevention interventions; and for policy makers, any recommendations and guidelines about transgender health services must include consultations with transgender persons. The project team identified three transgender-specific concerns: violence and discrimination directed at transgender persons; transgender bodies, sex and sexuality; and other health concerns, including hormone therapies, mental health counseling, and sex reassignment surgery.

The report highlights three ways in which health care for these populations can be improved: provision of integrated services, comprehensive services, and community engagement in improving services.


This paper is a product of the Sexual Health and Rights Program (SHARP) of the Open Society Institute, which aims to develop and implement a global strategy to improve the sexual health and rights of socially marginalized populations, with particular focus on the HIV epidemic.

The author describes Thai culture as one that values non-confrontation and maintains distinct hierarchies and roles based on age, gender and wealth. Those who break social mores in Thailand are not directly challenged but rather are ignored and rejected from society, a sometimes very subtle but painful and debilitating form of social exclusion. This report examines the lives of sex workers, transgender people and MSM in this society. All three groups report that social stigma is the major obstacle to achieving good sexual health and having their rights respected.

Among the unique issues that Thai and Buddhist transgender persons face is the particular notion of stigmatization in Thai society, which is based on subtle shunning of individuals from family and social relationships; the inability of male-to-female transgender persons to be ordained as Buddhist monks, seen as a necessary step in attaining enlightenment for one’s self and mother according to common interpretations of Theravada Buddhism; and the association of transgender identity as punishment for transgressions in a past incarnation.

At the time of the report, among the limits on a transgender person’s gender identity is the inability to change one’s sex on official government paperwork. This impacts health care, military service, and many other facets of a transgender person's life beyond the core value of positive gender identity.
This report represents the first time systematic research on the situation of LGBT people in Armenia has been carried out. The authors report widespread societal and institutional discrimination against LGBT people in Armenia. The Armenian Apostolic Church, to which almost 95 percent of the population belongs, regards homosexuality as immoral. The word ‘homosexual’ is meant and heard as an insult and has frequently been used in attacks on political opponents, even in the National Assembly. Socially, LGBT people are seen as undesirable and feel they must conceal their true nature throughout their lives.

There are no provisions in Armenian legislation protecting against discrimination based on sexual orientation or gender identity. Homophobia is so ingrained in the culture that the authors report that the act of coming out ‘cannot be underestimated, both in terms of the courage required to speak openly about one’s sexuality and also in terms of the psychological pressure of feeling forced to stay hidden.’ There is little LGBT community organization, and gay, lesbian, bisexual and transgender people have little or no opportunity to access information, education and support in remaining HIV-negative. One of the few LGBT groups in Armenia, We For Civil Equality, has as its goals addressing discrimination against LGBT people, and providing information and support around HIV/AIDS and other sexual health issues.

When Mexico, a State Party to the International Covenant on Civil and Political Rights (ICCPR), submitted its fifth periodic state report to the U.N. Human Rights Committee as required by the Covenant, a group of organizations, including a clinical law program at Harvard Law School, submitted this Shadow Report on the status of LGBT persons in Mexico.

The groups note that while Mexico has recently loosened some restrictions and increased protections for homosexuals, transgender persons are not similarly protected against discrimination. Discriminatory attitudes toward LGB and transgender persons are widespread, and transphobic hate crimes are common in Mexico. Transgender persons have been subjected to mass deportations, extortion and physical abuse by police and military officials. The Shadow Report states that Mexico’s country report contains no information on these human rights violations against LGBT persons.

The authors point out that the failure of the Mexican government to protect its LGBT population constitutes violation of provisions of the ICCPR that prohibit discrimination and guarantee gender equality. Gender identity is not a protected category in federal anti-discrimination laws, and there is no nationwide law allowing amendments to birth certificates and other identification documents. A 2008 survey found that 50 percent of transgender people had faced discrimination, physical abuse and denial of academic support in the school system.
The ICCPR also protects the rights to life, liberty and security of the persons and the right to be free of arbitrary detention and cruel, inhuman or degrading treatment. The authors note there is evidence that hate crimes against LGBT people, including murder, often go uninvestigated or are dismissed as ‘crimes of passion.’ Transgender persons are assumed by police to be sex workers and upon arrest are subjected to demands for sex or money. Transgender persons are often arbitrarily detained or threatened with arrest on the basis of vague public morals laws.

The groups point to other violations of the ICCPR by Mexico, with respect to its treatment of LGBT people, and sets forth recommendations and questions it would like the Committee to pose to Mexico.

Sarit A. Golub, et al., _The Role of Religiosity, Social Support, and Stress-Related Growth in Protecting Against HIV Risk Among Transgender Women, 15 J. Health Psychol. 1135 (2010)_

Studies have indicated that transgender women (male-to-female transgenders) may have HIV incidence rates higher than any other risk group. One reason posited is the fact that transgender persons face social stigma and marginalization which are often associated with increased psychological stress, a critical predictor of high-risk behavior such as unprotected sex. At the same time, research on resilience to stress reveals several important factors that may help stigmatized individuals cope with discrimination and other stressful life situations. These factors include social support, stress-related growth (defined as perceptions of positive personal or life changes associated with stressful events), and religious behaviors and beliefs.

This study examines the impact and interaction of these three factors on risk behaviors in a group of 75 transgender females in the New York City area. Social support was found to be an important factor in promoting healthful behaviors for marginalized populations. When social support is low, religious behaviors and beliefs play an important role in decreasing the risk of unprotected sex; however, when social support is high, the impact of religious behaviors and beliefs is reversed. The authors conclude that internal aspects of religious belief may be protective against risk behavior, but for some transgender women, institutionally-based religious behaviors may be problematic in that some religious institutions are intolerant of gender non-conforming individuals and cause psychological stress associated with high-risk behaviors.

The authors conclude that HIV prevention interventions for this community should incorporate strong elements of peer support to reduce sexual risk behavior, encourage spirituality and perceptions of religious stress-related growth, and educate religious institutions about the transgender community.


This study examines why Africa lags behind Latin America, Asia and Eastern and Central Europe in providing HIV prevention services for same-sex practicing people, even though HIV rates for MSM in Africa are substantially higher than in those regions. The conclusions: homophobic stigma and denial makes same-sex practicing people
‘invisible’ and contribute to widespread human rights abuses and increasing vulnerability to HIV; the international health policies of the United States promote conservative dogma over proven best practices in HIV prevention; international and domestic NGOs are hampered by capitulation to conservative African governments or the restrictive funding policies of the United States; and LGBT organizations in Africa are underdeveloped or lack the political space to advocate effectively for health-related human rights.

The report does not address the specific discrimination faced by gender non-conforming people; however, the author comments that IGLHRC remains concerned about the heightened vulnerability of transgender persons to HIV infection. Discrimination in housing, education and employment often drive non-conforming males into sex work, and non-conforming females are often at particular risk of violence and sexual abuse, both of which increase the risk of HIV infection.


*Hijra*, or ‘third gender’ people, have existed for centuries in the Indian sub-continent. *Hijra* do not conform to conventional notions of male and female but combine or move between the two. Such non-conformity to gender norms is condemned in Bangladesh and subjects *hijra* to harassment and abuse, often leaving them with few employment opportunities other than sex work involving unprotected sex with multiple clients and making them vulnerable to sexually transmitted diseases.

This paper reports on ethnographic research aimed at analyzing and understanding the *hijra* culture and the complex ways in which *hijra* experience social, economic, cultural and political exclusion. The authors’ research, done over a two-year period in Bangladesh, involved 70 interviews with *hijra* as well as with non-transgender persons working in the *hijra* community. The study found that *hijra* experience multiple dimensions of exclusion. For example:

- Family members often accept a boy’s preference for female clothing and female household status during early childhood, but by adolescence these behaviors attract condemnation and social disapproval. As adults, *hijra* are often excluded from family events such as weddings and funerals. On *hijra* reported that she did not attend her father’s funeral due to resistance from family and the *Imam* conducting the service.
- Effeminate boys are often unable to find a safe place at school, being rejected both by male and female peers and often subjected to abuse by teachers. Unable to adapt within hostile school environments, most become reluctant to attend school. Many drop out of school, thus diminishing future employment opportunities.
- As adults, finding a safe living place is difficult. Landlords are reluctant to rent to them, and most *hijra* live in slums with a history of eviction. Some are homeless, living in parks. Those who are able to find gainful employment are often abused verbally, physically and sexually at workplaces, or are dismissed by employers who wish to ‘save the workplace from sexual pollution.’ Many *hijra* turn to sex work to support themselves.
- Romantic relationships are difficult to maintain, as Bangladesh society does not permit any transgressive relationship beyond hetero-normativity. Sexual relationships are complicated and often exploitive.
- Many *hijra* spend their later years in isolation and poverty. Even after death, a normal burial is denied to
The authors report that the multiple deprivations in the lives of *hijra* are based on societal inability to recognize *hijra* as separately-gendered human beings with human potential and dignity. *Hijra* are never allowed to move along the continuum between social exclusion to inclusion; rather, they are located at the extreme pole of exclusion. The experience of continuous restricted access to economic, social, political and cultural resources leads to negative impacts on health. The authors conclude that HIV interventions in this population can be effective only if designed to enhance the dignity and quality of lives of *hijra*, protecting their basic human, sexual and gender rights.


This study, conducted in seven U.S. cities, evaluates the use of social networks to reach persons with undiagnosed HIV infection in ethnic minority communities and to offer medical care and prevention services. Studies have shown that high-risk sexual behavior is much more prevalent among HIV-positive persons who are unaware of their status. HIV-positive persons were enlisted to refer others from their social, sexual or drug-using networks for HIV testing, counseling and referral services.

The authors found that the HIV prevalence of 5.6 percent among those recruited in this project was significantly higher than the 1 percent identified in other CDC sites and concluded that such a peer-driven, network-oriented approach is highly effective in identifying persons with undiagnosed HIV infections and linking them with medical care and counseling.


This news article reports on Canada’s ‘Identity Screening Regulations,’ which provide that an air carrier shall not transport a passenger who does not appear to be of the gender indicated on the identification he or she presents, or who presents more than one form of identification and there is a major discrepancy between those forms of identification. The author notes that this regulation could effectively bar transgender persons from boarding a plane in Canada.

Even those countries which permit a legal change of gender often require complicated processes for changing gender markers on documents; however, some countries are now beginning to allow gender identity on travel documents to be based on self-identification. The author states that the International Civil Aviation Organization (ICAO)’s regulations require four mandatory personal data points on all international travel documents: name, date of birth, nationality and sex, and ICAO’s Standards for Machine Readable Passports permit the ‘sex’ field to be noted as ‘unspecified,’ in addition to female or male. The author notes that, if international standards do not
require that a gender be specified at all, then Canada’s insistence on a strict match between appearance and documentation goes well beyond what is required for air security.


This news article reports on a ruling by the Pakistan Supreme Court, permitting transgender persons, known in Pakistan as ‘hijras’ or eunuchs, to register to vote identifying themselves as a third sex. The article quotes the leader of the transgender community of Rawalpindi, who states that the police have begun to treat transgender people with more respect since institution of the lawsuit, which challenges hijras’ treatment by the government.

[Note: Note 245 includes a description of this case, but the link is incorrect – it takes the reader to the Swedish Prime Minister letter reference, noted elsewhere in this Bibliography. I found the article discussing the case and added it to the Bibliography but can’t find the text of the case itself (so I didn’t prepare an abstract). The Endnote says that the court ruling ‘has not been put into effect.’ This may be, but I’m not sure what they mean by that and I can’t find a source that confirms the fact that the case hasn’t been put into effect. In any case, the Endnote link should be corrected].


This brief article/fact sheet addresses data collection regarding sex (*i.e.*, birth or biological sex) and gender (*i.e.*, a person’s sense of themselves as male or female) in HIV/AIDS research in the United States. The author reports that there is no national data on the prevalence of HIV in the transgender community, due to a lack of data collection by the Centers for Disease Control and Prevention (CDC) or other federal agencies. However, smaller regional studies indicate that the transgender community, particularly male-to-female transgenders, is one of the populations hit hardest by the HIV epidemic.

The author reports that the majority of HIV/AIDS research fails to accurately collect information on sex and gender and often overlooks the fact that HIV/AIDS treatment may interact in unknown ways with hormone therapy. The author recommends that all research studies include information about birth sex and gender identity of the subjects, that research networks develop consistent guidelines for collecting information about birth sex and gender identity, and that researchers educate themselves as to the needs of transgender trial participants.

This report looks at the effects of the 2007 amendment to Article 198 of Kuwait’s public decency law, which criminalized the act of ‘imitating the opposite sex in any way.’ This new offense is punishable by up to one year in prison and a fine of up to 1,000 Kuwaiti dinar (approximately US $ 3,600). The statute does not prohibit any specific behavior or act; rather, it criminalizes a person’s physical appearance in vague language which leaves wide discretion for an arresting officer to determine whether an offense has occurred.

Prior to the amendment, transgender women in Kuwait lived with minimal interference by police. Since the amendment, they report widespread police harassment, degrading and humiliating treatment, blackmail, sexual assault, lack of due process protections, and abuse at times rising to the level of torture. Negative societal attitudes toward transgender people, fueled by the new law and a media vilification campaign, have led to denial of medical care and restrictions on freedom of movement.

Human Rights Watch analyzes the law through a human rights perspective, and discusses the debates within Islamic jurisprudence on the issue of sex reassignment surgery and legal change in gender identity. HRW notes that the law itself constitutes a violation of fundamental rights protected by international conventions, including the right to non-discrimination, equality before the law, free expression, personal autonomy, physical integrity and privacy. The consequences of the amendment further violate the right to health and access to health care without discrimination.

The report includes recommendations for the Kuwait government, among them investigation of allegations of police abuse and torture, an immediate moratorium on arrests under amended Article 198, followed by repeal of the law. HRW also recommends that Kuwait allow persons diagnosed with gender identity disorder to change their gender in legal identification papers.

**Siddarth Narrain, Crystallising Queer Politics – The Naz Foundation Case and Its Implications for India’s Transgender Communities, 2 N.U.J.S. L. Rev. 455 (2009), available at:**

This law review article discusses the landmark Naz Foundation case and the likely effect that ruling will have on the transgender community in India. The author notes that, in contrast to cases from South Africa and the United States that decriminalized same-sex sexual acts and focused on sexual orientation, the Naz case explicitly discussed the transgender community, and the right to be free from discrimination based on gender identity as well on sexual orientation.

In the course of the article, the author describes the Criminal Tribes Act of 1871, a law passed during the British colonial era in India, authorizing the colonial government to designate and keep close track of certain groups considered predisposed to commit crimes. If a tribe or group was designated as ‘criminal,’ the entire community could be placed in a reformatory colony. The Act was amended in 1897 to include ‘eunuchs’ (now known as hijras or third sex persons) within the category of those likely to commit crimes.

Under the 1897 amendment, local governments were required to maintain registers of the names and addresses of eunuchs ‘reasonably suspected of kidnapping or castrating children’ or of engaging in sexual behavior defined
as criminal. Eunuchs on the registry were not allowed to serve as guardians of any minor, to adopt a son, to make a gift or will, or to keep in their charge any boy younger than 17; violations of these provisions could incur a sentence of up to two years’ imprisonment. Registered eunuchs were further prohibited from appearing in public dressed in female clothing, and from dancing, playing music or participating in any public exhibition.

The Criminal Tribes Act was repealed upon independence; however, the author notes that a large part of the stigma and consequent harassment faced both by members of the ‘criminal tribes,’ and the hijras, continued in postcolonial India.


The authors note that transgender people are often subjected to violence as ‘punishment’ for transgressing gender norms, and transgender youth are among the most marginalized and vulnerable young people in society. ‘Transgender people challenge our very understanding of the world. And we make them pay the cost of our confusing by their suffering.’ As one example among many other issues, transgender persons face discrimination in housing, are often rendered homeless, and then may face particular obstacles in accessing gender-appropriate services within homeless shelters.

This article reviews the law and jurisprudence surrounding human rights of people of diverse sexual orientations and gender identities and details the process by which the Yogyakarta Principles were developed and have been disseminated thus far. The authors assess the Principles and conclude that, while imperfect, the Principles are relevant to the actual situation of sexual minorities, coherently reflect existing international legal standards, and have great potential to contribute to a more equitable future for LGBT persons.


This report summarizes legal and social attitudes to LGBT persons throughout North and South America. The author reports that concepts of homosexuality and attitudes toward other sexual minorities are highly influenced by culture. The English, Dutch and French-speaking regions have inherited a northern European perspective that identifies any individual who has sex with someone of the same sex as homosexual.

The Spanish and Portuguese-speaking regions, by contrast, have inherited a Mediterranean perspective in which only effeminate, submissive men are thought of as homosexual; these persons, including male-to-female
transgender persons, are subject to discrimination and verbal and sexual abuse. On the other hand, MSM who are perceived as sexually dominant and *macho* are not considered ‘homosexual’ at all and suffer little social stigma. This creates a demand for male sex workers to cross dress so as to protect their clients’ reputations. Thus, the same prejudices that cause most male homosexuals to carefully conceal their orientation cause those who service them sexually to have to expose their identities in ways that subject them to harassment and violence. Effeminacy and cross dressing are seen as serious violations of the masculine ideal in cultures focused on *machismo*.

The author provides a country-by-country report on attitudes and policies toward LGBT persons in the hemisphere. He finds that countries that are hostile or indifferent toward the human rights of lesbians, gays, bisexuals and transgender persons are nearly always indifferent to the plight of those living with HIV.


In this news item posted online, Human Rights Watch (HRW) reprints a letter sent to the Prime Minister of Sweden from Boris O. Dittrich, Advocacy Director of the organization’s LGBT Program. In the letter, HRW expresses its serious concern that the government had made no decision on changing Sweden’s transgender law, which provides that people who want to change their legal gender are compelled to be sterilized. A proposed change in the law to eliminate the sterilization requirement was presented to the Minister of Social Affairs by the Swedish National Board of Health and Welfare.

The letter notes that the Commissioner for Human Rights and the Committee of Ministers of the Council of Europe have both called for European countries to remove from their laws all physical requirements for people wanting to change their legal gender, and to take all necessary steps to guarantee full recognition of gender reassignment. The letter also points to the Yogyakarta Principles, which encourage States to consider measures permitting all people to determine their own gender identity. HRW urges the Prime Minister to accept the recommendation of the National Board and submit a legislative proposal to abolish the discriminatory provision.

*Erin C. Wilson, et al., Sexual Risk Taking Among Transgender Male-to-Female Youths with Different Partner Types, 100 Am. J. Public Health 1500 (2009)*

Transgender females (persons born anatomically male who identify as female) are a group at high risk for HIV infection. This study of 120 transgender female youth (median age 21) in two U.S. cities found that sexual risk behavior varies according to whether a sexual partner is a main (or relationship-oriented) partner, a casual partner, or a commercial partner. The studied population was more likely to forgo condom use with a main partner than a casual or commercial partner; in fact, transgender females were four times more likely to report always using a condom with commercial sexual partners than with main sexual partners.
The authors conclude that HIV prevention programs in this population should focus on integrating effective communication strategies for discussing HIV status and should formulate ways that youths can negotiate being tested for HIV with their main partners to ensure that decisions on condom use are well informed.


The American Foundation for Suicide Prevention (AFSP), in this Public Policy Issue Brief, advocates legislative and research initiatives that seek authorization and funding for data collection on suicide risk among LGBT populations, that support anti-bullying efforts and nondiscrimination in schools, and that improve access to mental health services for LGBT individuals.

The AFSP lists the following risk factors for LGBT suicidal behavior: significantly higher rates of depression, anxiety disorder and substance abuse in individuals who identify as LGBT; and stressors associated with sexual minority status, including personal rejection, bullying and harassment, hostility and physical violence. In addition, laws and public policies that fail to protect against discrimination for persons who identify as LGBT have been associated with higher rates of mental disorders and disparities in health coverage in these populations.


This report is the result of a project initiated by a group of U.N. agencies and intergovernmental and nongovernmental organizations to examine programs that seek to address HIV and promote health and rights among MSM and transgender people in six Asian cities: Bangkok, Chengdu, Ho Chi Minh City, Jakarta, Manila and Yangon. The purpose is to identify activities which, if widely adopted and scaled up in combination, would lead to reduction in rates of HIV infection, improve access to health services, and reduce human rights violations in urban areas in the Asia-Pacific region.

HIV prevalence in MSM and transgendered people in these cities has been increasing rapidly. The authors found that transgendered people are absent in the programs and strategies in most community HIV programs, even though they face very high rates of HIV infection and require specialized health, legal and human rights services related to gender identity. In addition, transgendered people often experienced heightened levels of violence, unemployment, poverty, police harassment and arrest, and denial of health services.

The initiative developed a comprehensive package of successful strategies for fighting the HIV epidemic among these populations. It calls for programs that include peer outreach and peer education, drop-in services, and promotion of, and access to, the means of HIV prevention. Online and new technologies are an important part of programs aimed at reaching large numbers of people, including ‘hidden’ populations. MSM and transgender-led
services form a critical element of city-based responses, and public/private partnerships can add needed expertise as well as financial resources to local HIV responses.


Compared to heterosexuals, LGBT persons experience higher levels of psychological distress, depression, anxiety, binge drinking and heavy tobacco use, and are more likely to report unmet mental health needs. This study found that, although LGBT individuals were more likely to report a major incident of discrimination over the past year than were heterosexual individuals, discrimination did not account for the disparity in the level of mental health between the two groups. The author concludes that further research should explore additional forms of discrimination and additional stressors associated with minority sexual orientation that may account for this disparity.


This study focuses on legal and political factors beyond explicitly punitive law and policies, most significantly the lack of protection for hate crimes against sexual and other minorities, which can drive vulnerable populations such as transgender persons ‘underground,’ especially where those crimes are committed by government agents. Social exclusion presents further challenges to the struggle for equality and the realization of health. Additionally, lack of awareness or insensitivity to cultural diversity can limit an HIV/AIDS response.

Strategies to understand and confront social vulnerability are urgently needed, including improving understanding of the characteristics and HIV burden among sexual minorities; creatively confronting legal, social and cultural factors leading to exclusion; ensuring provision of broad-based and effective HIV prevention programs; offering adequate care and treatment; and confronting special challenges arising in lower and middle-income countries.


This APCOM/UNDP study presents an overview of the status of laws directly and indirectly affecting MSM and transgender persons in 48 Asia-Pacific countries. The paper highlights the punitive nature of most legal regimes in the area, ranging from criminalization of sexual acts to censorship and civil society registration laws that prevent grassroots organization and communication. It also focuses on the role of civil society, government and multilateral organizations in reforming punitive and detrimental laws, policies and practices.
The study notes that epidemiological studies of MSM and transgender persons in Asia and the Pacific are crucial because at current infection rates, by 2020 close to half of all new HIV infections in Asia will be among MSM. Even currently, when Papua New Guinea is excluded, one-third of recorded HIV cases in Pacific island countries result from male-to-male sex.

Legally, the study notes that 19 of the 48 countries in the region criminalize male same-sex sexual acts, and several other countries target MSM and transgender persons through punitive laws related to public order and sex work. However, on a more positive note, some countries, by legislation or court decision, permit legal change of gender designation on official documents and/or the right of a transgender person to marry a person of their previous sex.


6,450 respondents participated in this nationwide survey on the impact of anti-transgender bias on transgender people, the largest survey ever undertaken on this topic. Respondents reported harassment and discrimination in education from both peers and teachers; employment discrimination and economic insecurity; housing discrimination and homelessness; discrimination in public accommodations such as hotels, restaurants, airports, government agencies; harassment and abuse by police and in prison; problems with receiving updated identification documents; and discrimination in health care and poor health outcomes.

With respect to health, many respondents reported being refused medical care due to their transgender status, and many postponed medical care due to fear of discrimination or inability to pay. Visual conformers and those whose identity documents matched their presentation were more likely to use doctors’ offices than emergency rooms for their medical care. Many respondents stated that they had not informed their doctors of their transgender status. Transgender persons had much higher rates of substance abuse and suicide attempts than were found in the general population, and they reported over four times the national average of HIV infection.


This article reports on a three-year study by an expert panel addressing suicidal behavior and suicide risks in sexual minority populations, aimed at stimulating the development of prevention strategies, interventions and policies. This has been a little-studied issue, despite four decades of data showing an elevated suicide risk in these LGBT populations.

The authors note that gender identity is not an entirely fixed characteristic, with many transgender people moving fluidly between identities over time, often without any specific labels. Inconsistent definitions lead to lack of clarity above the prevalence of transgender people in any given population, and there has been no general survey of the adult or adolescent populations attempting to measure transgender identity. Sexual orientation varies...
among transgender individuals, just as it does among people who perceive their gender identity to be aligned with their biological sex.

Research on suicide risk among transgendered people has been much more limited than that dealing with lesbian, gay and bisexual people. Studies in the late 1990s appeared to show an alarmingly high rate of suicide deaths among transsexual persons. Suicide attempts appear to occur more frequently among transgender adolescents and young adults than among older populations. Parental rejection, discrimination in employment and elsewhere, mistreatment, verbal abuse and invasions of privacy impact the mental health of transgender people, and high unemployment rates in this population means lack of health insurance coverage, which impacts access to health care services.

Although the research that has been done has consistently found high rates of suicide attempts among transgender people, more rigorous research is needed before definitive conclusions can be reached about suicidal risk in this population. Gaps in knowledge result from a combination of factors, including the low priority historically given to the study of sexual minority populations, the difficulties inherent in studying largely hidden population groups, and the omission of sexual orientation and gender identity from sociodemographic data. Better understanding of how LGBT individuals develop and sustain resilience in the face of the challenges inherent in sexual minority status may help reduce the risk of suicidal behavior in these populations.

The authors make a number of recommendations, including the need for focus on the mental, as well as physical health problems that disproportionately affect LGBT people. The article also discusses the current debate over whether the diagnoses of Gender Identity Disorder and transvestic fetishism in the Diagnostic and Statistical Manual of Mental Disorders (DSM) should be deleted, retained or amended in the fifth edition of DSM due out in 2013.


This article, aimed primarily at health care providers, discusses some of the unique challenges faced by transgender persons trying to maintain their health. Data on incidence of HIV infection among transgender persons is patchy, given the small reported numbers of transgendered persons worldwide and the fact that global health surveys rarely include gender-variance variables. The United States Centers for Disease Control and Prevention estimate a U.S. HIV prevalence of 27.7 percent among male-to-female transgenders, although other studies have resulted in estimates ranging from 100 to 78 percent in this population. Rates are estimated to be much lower among female-to-male transgenders.

Transgendered persons face a number of challenges that put them at increased risk for HIV infection, including economic marginalization resulting from low education levels and lack of opportunity; a high incidence of sex work as a means of support; personal sexual practices and partnership arrangements; substance use; social marginalization and lack of family support; and treatments such as hormone therapy and silicone injections occurring outside of a medical setting.
Health issues particularly relevant to transgender persons include possible interactions between hormone treatments and ART; sex reassignment surgery in HIV-positive persons; health insurance coverage for hormone treatment and reassignment surgery; safe sexual practices following reassignment surgery; psychological issues and risk of suicide; and problems finding appropriate medical care and knowledgeable medical providers.


This study reviews the influence of social factors on the HIV/AIDS epidemic in Bangladesh, which has a low HIV/AIDS incidence in its general population (<1%) but high prevalence in several stigmatized populations, including female IDUs, sex workers, MSM and transgender persons, known as *hijra*. Traditionally, *hijra* played an important social role in providing entertainment at marriage and birth ceremonies, in spite of the fact that they also suffered from low social and economic status. However, modernization has reduced their traditional earning opportunities, and many *hijra* now engage in high-risk sex work to survive. *Hijra* are also subject to physical violence and threats from community members. These factors combine to reduce the probability that *hijra* will engage in safe sex practices, seek treatment and care services, and become engaged in the political process.


This is the sixth annual report by ILGA, ‘the only international non-governmental community-based association fighting discrimination on grounds of sexual orientation and gender identity as a global issue.’

The report provides a global overview of developments in LGBTI rights, under headings such as criminalization of homosexual acts, age of consent issues, discrimination in employment based on sexual orientation and gender identity, hate crimes as an aggravating circumstance, marriage and adoption rights of same-sex couples, and gender recognition after gender reassignment treatment. The report also presents a country-by-country rundown of legislation related to these topics; countries are grouped into regions, with each region accompanied by a narrative report summarizing legal developments in the area.


This article introduces a special issue of the Journal of Homosexuality presenting research on a variety of health care issues encountered in the LGBTI population in the United States between 1993 and 2002. The authors conclude that research describing health care needs of transgender and intersex populations is at an early stage, and much remains to be done to design effective medical and mental health interventions for these populations.

Male-to-female (MTF) transgender persons confront multiple health risks, most notably the risk of HIV infection. HIV prevalence in this population is estimated to range from 11 to 78 percent. Research has shown that socioeconomic and psychological adversity contribute to the high prevalence of HIV risk behaviors, and depression and poor self-esteem associated with stigma contribute to low negotiation power with respect to demanding safe sex.

Ethnic differences in HIV prevalence among male-to-female transgender persons have been reported. The authors conducted this study to investigate HIV risk behaviors in a sample of African-American, Latina and Asian/Pacific Islanders in San Francisco, to identify factors that can be addressed in behavioral interventions aimed at reducing HIV transmissions. The study found that about ¾ of participants in the study had engaged in receptive anal sex recently. Rates of unprotected receptive anal sex were highest with primary partners and less so for casual or commercial partners, confirming previous studies indicating that relationship intimacy was a barrier to condom use and risk reduction. While participants who reported commercial sexual relations endorsed 100 percent condom use, economic pressures compelled many to compromise their condom rules and engage in unsafe sex for more money.

Risk behavior varied between ethnic groups, with African-Americans and Latinas the highest rates of receptive anal sex; these two groups also reported particularly adverse socioeconomic conditions. Lower rates of risk behaviors and HIV infection among Asian/Pacific Islanders were associated with higher education and income levels and lower likelihood of engaging in commercial sex work.


The authors use the term ‘transmen’ to refer to individuals born or assigned female at birth and who identify as male. The sexual health of this population has not been the object of much study, and the authors aim to fill this gap. They say that understanding the sexual practices of transmen who have sex with men is important in developing focused HIV prevention programs. Over 62 percent of participants in the study had used the internet to meet anonymous sexual partners, and over 43 percent reported having unprotected sex with a nontransgender male partner in the past 12 months. Over 31 percent of participants had not received gynecological care, including STD screening, in the past 12 months.

The authors identify several important aspects of an effective health intervention for this population, including integrating sexual health information by and for transgender men into other health care services, addressing psychological issues such as depression and anxiety, provision of internet-delivered STD prevention information, and training for health care providers.

This presentation describes the increased risks to transgendered sex workers in Cali, Colombia who do not have government-issued identification cards. Although it is a legal requirement in Colombia that everyone carry a national ID card, many transgender sex workers do not have national ID, or choose not to carry one, as the cards do not reflect their gender identity. This leaves transgender sex workers vulnerable to police harassment and arrest; in addition, lack of an ID card means they cannot access the national health system.

A community-based organization of transgendered people in Cali therefore developed an alternative ID card for transgendered sex workers, with the person’s name but without any mention of gender. While the card is not legally recognized, the organization has worked with police authorities, encouraging them to informally recognize the alternative ID card and refrain from arresting workers who carry the card. The group also negotiated an arrangement with the departmental hospital to allow transgendered sex workers who have the alternative card to affiliate with the national health service and receive HIV testing at no cost.

The presenter reports that the card has become a powerful mobilization tool for the transgender community. As of the date of the presentation, 324 transgender sex workers carry the alternative ID. These workers can now access health care and are more comfortable doing so, as they addressed by their chosen name and gender in the health centers.


This study examines the effect of transphobia, defined as societal discrimination and stigma of individuals who do not conform to traditional notions of gender, on the chances of transgendered women engaging in unprotected receptive anal intercourse, a sexual behavior raising a high risk of HIV infection. Although exposure to transphobia was not found to be independently related to the high-risk behavior, among transgendered women 18 to 25 years old, higher levels of exposure to transphobia carried a 3.2 times higher risk for engaging in unprotected receptive anal intercourse as compared with those reporting lower levels of exposure.


This report compiles data from 147 countries on national progress in implementing the 2001 Declaration of Commitment on HIV/AIDS. It comes at the halfway mark between the 2001 Declaration and the Millennium Development Goals target of reversing the AIDS epidemic by 2015. Findings indicate that although the global percentage of people living with HIV has stabilized since 2000, the number of people living with HIV has increased.
This is due not only to new infections, but also to increased availability of life-prolonging ART. Sub-Saharan Africa is the region most heavily affected.

The report details trends in infection in groups ranging from pregnant women to children under the age of 15, drug users, MSM and sex workers. It concludes that success in responding to the AIDS epidemic will depend on progress in reducing human rights violations, reducing gender inequality, strengthening legal protections against discrimination, preventing new infections by providing accurate, comprehensive information on HIV, and increasing access to treatment and care.


UNAIDS reported in 2010 a renewed focus on its goal of ‘zero discrimination, zero new AIDS infections, and zero AIDS-related deaths.’ The report notes a 19 percent decrease in the number of new infections since 1999, and an increase in access to treatment for those living with HIV in low- and middle-income countries. It generally concludes that steady progress has been made toward achieving universal access to HIV prevention, treatment, care and support, but challenges remain.

The report further notes that human rights are increasingly becoming part of nations’ response to the AIDS epidemic but that criminalization and discriminatory laws continue to present problems. Stigma, discrimination and violence against transgender people is still widespread and increases the risk of HIV infection for them and their partners.


This report finds that the failure to respond adequately to the human rights and public health needs of MSM and transgender people, two groups with the highest rates of HIV infection, has fallen far short of what is required to ensure universal access to services for HIV prevention, treatment, care and support.

The report notes that, in some contexts, transgender people are also involved in sex work and/or inject drugs. Therefore, addressing the epidemic among marginalized groups is important not only for members of those groups but also is an effective strategy to avert a larger epidemic among the general population.

Pointing out that all people, including MSM and transgender people, have the right to the highest available standard of health and equality before the law, the report notes further that there is a strong public health rationale for prevention of transmission between MSM and transgender people.
The strategy outlined in the Framework is based on three key guiding principles: Action must be grounded in a commitment to human rights; action must be informed by evidence; and action is required by a broad range of partners, including affected communities, governments, the private sector, and the UN family.


The author conducted semi-structured interviews of seven transgendered adults. The purpose was to test out a theory-based interview guide and to increase awareness of adulterated silicone use among transgender persons. She found that adulterated injection liquid silicone is used widely among transgender persons to augment physical appearance, particularly among vulnerable and minority populations, and is associated with health complications. The study concluded, among other things, that there is a need for safer and more cost-effective transition options.


This is the third annual report following the 2006 United Nations General Assembly High-Level Meeting on AIDS, at which world leaders committed to scaling up toward the goal of universal access to HIV prevention, treatment, care and support services by 2010. The report details the efforts made in 2008 to meet these goals and assesses the current achievements and ongoing challenges in achieving universal access to HIV prevention, treatment and care.

Positive findings include the fact that, by December 2008, an additional 1 million people were receiving ART in low- and middle-income countries, bringing the total to 4 million; an increase in people being counseled and tested for HIV; improvement in care of children living with HIV; and an increased number of countries phasing in ARV regimens for prevention of mother-to-child transmission. Nevertheless, the report further notes that many low- and middle-income countries are far from achieving the goal of universal access. It concludes that the desired scaling-up will require heightened political commitment and an increase in financial resources to the health systems in these countries.


While public health considerations and human rights principles mandate that those most at risk of HIV infection should be among those with greatest access to prevention, treatment and care services, this has not typically been the case globally. The most-at-risk populations include sex workers, injecting drug users, MSM and transgender people, among others. These populations are in need of services in every context where HIV infections are found; however, as this study reports, they are often hidden, stigmatized and discriminated against in health settings, and sometimes criminalized by legal systems.
Government policies outside the health sector, including legal status and policing practices, can enforce stigma and limit these groups’ access to health care. Recent studies of sex workers, including transgenders, in Eastern Europe and Central Asia found that 82 percent reported physical violence, and 36 percent experienced sexual violence, at the hands of police; in southern Africa, sex workers also reported violence and arbitrary detention by police, with transgender persons marked out for heightened risk. Where sexual behaviors are criminalized, at-risk populations may avoid health care altogether or may have to conceal their risk behaviors from health-care providers, thus making appropriate care less likely.

The authors compare the effectiveness of various models of service provision for these populations: mainstreaming, stand-alone services, and hybrid models. They conclude that different settings may require different models; however, certain fundamental principles must apply, whatever model is followed. The primary of these is that no one should be excluded from health care services based on sexual orientation (or gender identity), status as a sex worker, or past or active drug use.

**Council of Europe, Committee of Ministers, Recommendation CM/Rec(2010)5 of the Committee of Ministers to Member States on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity: Explanatory Memorandum (2010), available at:**

https://wcd.coe.int/ViewDoc.jsp?id=1570957&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383

This document provides a link to the Committee of Ministers’ 2010 Recommendation regarding discrimination on grounds of sexual orientation and gender identity, explains the context of the Recommendation and suggests ways in which European States can implement the Recommendation.

The recommendations are wide ranging, covering right to life and security; hate crimes and hate speech; freedom of association, expression and assembly; right to respect for private and family life; discrimination in employment, education, health, housing and sports; and right to seek asylum.

With respect to health, the Council of Ministers recommends that States work to protect the specific needs of vulnerable populations such as transgender people by ensuring through laws, policies and practices that the right to the highest attainable standard of health is enjoyed by all; that official government communications refrain from classifying, per WHO guidelines, homosexuality as an illness; that transgender people have the ‘effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements’; and that any legal or policy decisions restricting public reimbursement for gender assignment procedures be permitted only if they are reasonable and proportionate.

**Godwin, op. cit.**
This study by UNDP and the Asia-Pacific Coalition on Male Sexual Health presents an overview of the status of laws directly and indirectly affecting MSM and transgender persons in 48 Asia-Pacific countries.

As noted above, the study reports that several countries in the region target MSM and transgender persons through punitive laws related to public order and sex work. However, on a more progressive note, some countries permit legal change of gender designation and/or the right of a transgender person to marry a person of their previous sex. In addition, judicial decisions in several of the Asia-Pacific countries have upheld various legal rights of transgender persons. For example, the Supreme Court of Nepal, in the case of *Sunil Babu Pant v. Government of Nepal* (2007), decriminalized male-to-male sex, gave legal recognition to ‘third sex’ individuals, and directed the government to grant legal equality to all people regardless of their sexual orientation or gender identity.

He also reports that, in a series of judgments in 2009, the Supreme Court of Pakistan:

- Allowed transgender persons to receive financial support from relief organizations;
- Required the government to conduct a survey of transgendered persons;
- Ordered the Interior Ministry to ensure that transgendered persons are protected by police from crime;
- Required establishment of a mechanism to protect transgender people from police harassment;
- Directed the government to add a third gender column on national identity cards;
- Directed election officials to register transgender persons on voter rolls; and
- Required that a mechanism be put in place to assist transgender people with inheritance rights.


The International Commission of Jurists was instrumental in developing the Yogyakarta Principles, which constitute an authoritative interpretation of international human rights law as it relates to sexual orientation and gender identity. This paper, a follow-up project, is intended as a practitioners’ guide for judges and lawyers in applying international human rights norms to issues of sexual orientation and gender identity. The guide explains how international law and standards can be used to provide legal protection to those populations.

The paper discusses basic concepts of non-discrimination and equality in United Nations instruments, the European Court of Human Rights, the Inter-American system, and the African Commission on Human and Peoples’ Rights. It then focuses on specific rights as elaborated in international law and particularly applicable to discrimination on the basis of sexual orientation and gender identity: the right to a private life; right to be free from arbitrary deprivations of liberty; right to life; right to be free from torture and ill-treatment; freedom of expression, assembly and association; and the right to asylum and refuge. The Guide discusses legislative and judicial developments in international law and at the national level and provides guidance for legal professionals on interpreting this law in light of the fundamental principle of equality and non-discrimination.

*Itaborahy, op. cit.*
In this sixth annual report by the International Lesbian, Gay, Bisexual, Trans and Intersex Association, the author presents a global overview of developments in LGBTI rights.

While the report makes clear that transgender people continue to face harassment, discrimination and violence throughout the world, the picture is not all bleak. ILGA reports that 19 countries prohibit discrimination in employment based on gender identity, along with certain cities, provinces or states (some in the United States). In four countries, hate crimes based on gender identity carry increased sentences. Eighteen countries have laws on gender recognition after gender reassignment treatment, and some recognize the right to marry following treatment.


The author focuses on the concept of diaspora as one way of thinking about the concepts of sexuality, law and globalization. ‘Queer migration’ has most frequently been directed toward the United States, she says, as the land of opportunity and freedom; however, this stereotype overlooks the fact that many jurisdictions outside the United States have been even more forward-thinking when it comes to recognizing LGBT rights.

She begins by looking at transnational migration of LGBT persons, then moves to an examination of ‘constitutional diaspora,’ or the borrowing of legal principles across jurisdictions. She posits two examples of the latter: the introduction of antigay legislation in Uganda as influenced by American evangelicals; and the *Naz Foundation* decision in India, overturning India’s sodomy laws. The Indian Supreme Court in *Naz* adopted some of the reasoning of the U.S. Supreme Court’s decision in *Lawrence v. Texas* but went much further in articulating LGBT rights by relying on non-Western treatments of sexual orientation in law and culture.

In one section of the article, the author challenges the prevailing view that LGBT rights are nonexistent in Asia, citing a ruling by the South Korean Supreme Court recognizing the right of transsexuals to recognition of their gender identity, a transgender marriage case under consideration in Hong Kong, and a 2009 case in which the Pakistan Supreme Court held that transgender individuals had the right to be recognized as a third sex and to be free from police harassment.


This news item reports that Nepal completed its first national census to permit a third option in gender categories. The report notes that recognition of third gender rights follows a landmark decision by the Nepal Supreme Court in 2007, which required all citizenship certificates to clearly indicate an individual’s gender identity, whether male, female or other. The certificates serve as national identity papers and are needed to purchase property, obtain a passport, accept employment, and conduct other vital transactions. The web site includes a short documentary film on transgendered persons in Nepal and how the Supreme Court decision will affect them.
Ontario Human Rights Commission,


These portions of the web site of the Ontario (Canada) Human Rights Commission explain the equality provisions of the provincial Human Rights Code and how the Code relates to gender identity.

In the ‘Gender Identity’ section, the Commission notes that the Code provides for equal rights and opportunities and freedom from discrimination, and recognizes the dignity and worth of every person in Ontario. To that end, the Code prohibits discrimination on grounds of ‘sex’ as well as sexual orientation, and the intent of this provision is to outlaw discrimination against transsexuals, transgender and intersex persons, cross dressers, and others whose gender identity or gender expression is different from their birth-identified sex.

In the ‘Policy’ section, the Commission notes that it has developed policy statements and guidelines that cover many issues arising under the Human Rights Code; however, issues related to gender identity ‘remain largely unresolved in policy, procedures, and law.’ While the Code does not explicitly prohibit discrimination on grounds of gender identity, the Commission considers that the ground of ‘sex’ includes gender identity. That Commission notes that ‘[t]here are, arguably, few groups in our society today who are as disadvantaged and disenfranchised as transgenderists and transsexuals. Fear and hatred . . . combined with hostility toward their very existence are fundamental human rights issues.


In this study, the authors explore how male-to-female transgendered persons in urban settings develop supportive social networks defined by their gender and sexual identities. While the sociological literature identifies myriad problems faced by this population, particularly those of ethnic or racial minority status, including high rates of HIV/AIDS, drug addiction, violence and lack of financial resources, research has also shown that social support can help abate many of these problems. The authors were particularly interested in how minority transgendered females use gendered networks to develop social capital and engage in political action.

Among the important factors in building a community are adopting a shared vocabulary (most notably, in how the members designate themselves) and finding a community convergence point (in this case, the community clinic where low-income transgendered persons receive medical and psychosocial services and from which participants were recruited for the study). The authors noted that such community-building, including political organization and social advocacy, facilitated access to services and communication that improved the well-being of members. Understanding such communities and networks can help improve outreach to transgendered persons and improve the access to and quality of health care and support services in this population.
This paper, a draft chapter, examines a series of rulings by which the Pakistan Supreme Court ordered the national government and several provincial governments, to better protect equal rights of transgendered persons. The author states that the rulings were unexpected, although welcomed by many but that others, including many progressives, were puzzled and worried by the Court’s finding that transgenderism is a ‘gender disorder.’ The purpose of this paper is to analyze how different conceptions of gender and identity were articulated, and why these characterizations changed, over the course of the legal proceedings.

The author concludes that the Pakistan Supreme Court’s actions were both groundbreaking and problematic. While repeatedly agreeing to hear testimony as to the situation of transgendered persons in Pakistan, the Court also demonstrated a contradictory approach to the way it characterized and appeared to understand their gender.

This news item on the web site of Transgender Europe reports on a new law, effective March 15, 2011, regulating legal gender recognition in Portugal. The new law offers a standardized administrative procedure for a legal change of gender. An application is required, along with a certificate from a medical multi-disciplinary team, and the process takes only eight days. The article notes that Portugal is one of only three EU countries whose gender recognition legislation does not require sterilization.

The statute is available in Portuguese at: http://dre.pt/pdf1sdip/2011/03/05200/0145001451.pdf

This news item reports on the ease with which passport holders in India can change their names and gender identities. The author notes that although there is no specific provision of Indian law permitting official gender reassignment, the passport office allows an individual to change his or her preferred gender on travel documents by submitting an affidavit and a medical certificate. Human rights activists and lawyers interviewed for the article praised Indian passport authorities for making the procedure simple and dignified.

Godwin, op. cit.
This study by UNDP and the Asia-Pacific Coalition on Male Sexual Health presents an overview of the status of laws directly and indirectly affecting MSM and transgender persons in 48 Asia-Pacific countries.

The author reports that, since 2005, passport applicants in India have had a third option in the gender category, thus allowing hijras to identify as ‘other’ without having to undergo a sex change operation. Hijras are defined in this report as a culturally specific transgender sub-population found in India, Pakistan and Bangladesh, many of whom identify as being neither male nor female, but hijra.

The author notes further that passport applicants who have undergone surgery for sex change can apply for a new passport under the new gender, or can change the gender on a previously-issued passport, by supplying an affidavit of sex change along with a medical certificate from the hospital where the operation took place.

**Government of India, Ministry of External Affairs, Passport Seva: Consular, Passport & Visa Division, available at:** [http://passportindia.gov.in/AppOnlineProject/welcomeLink](http://passportindia.gov.in/AppOnlineProject/welcomeLink)

This website provides information for Indian citizens wishing to apply for a new or reissued passport. A link for ‘Documents Required’ under the ‘Reissue’ of Passport’ heading describes documents needed to change one’s sex on a passport. The applicant must provide a sworn affidavit regarding change of sex, and a certification from the hospital where the applicant underwent a sex change operation.

**Itaborahy, op. cit.**

In this review of worldwide developments in LBGTI rights, the author makes reference to the gender rights law passed in Argentina in May 2012. He describes it as a groundbreaking law that allows transgender persons to correct name, sex and image regardless of psychological diagnosis, medical treatment or surgical intervention. In addition, the law ensures full access to health care including surgery or hormone treatment, without judicial or administrative authorization, to be included in mandatory medical program without cost to the patient whether in public or private medical facilities.


The BBC reports on a new in Uruguay, awaiting the President’s signature, which permits transsexuals to change the name on their birth certificates, passports and other official documents to reflect the gender of their choice. Documents showing the original gender and name will not be destroyed but will be archived and amended. A
spokesperson for an advocacy group said that the new law would ease integration of transsexuals into the labor market and the educational and health systems. The law was strongly opposed by the Catholic Church in Uruguay but nevertheless passed unanimously.

The statute is available online in Spanish at:
http://www0.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18620&Anchor


This article reports on a gender rights law approved in May 2012 by the Argentine legislature. The law provides that public and private health care plans must cover sex-change surgery or hormone therapy for adults, and it gives transgender people the right to specify how their gender is listed at the civil registry. Under the new law, any adult will be able to legally change his or her gender without having to get approval from doctors or judges, and without having to undergo physical changes before doing so. Minors under the age of 18 are allowed to legally change genders with their parents’ approval, and parents may not make the change on the minor’s behalf unless the minor approves.

The statute is available online in Spanish, at:
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