



SOUTH ASIA REGIONAL ADVOCACY FRAMEWORK AND RESOURCE GUIDE

HIV, Human Rights and Sexual Orientation
and Gender Identity



*Empowered lives.
Resilient nations.*



SAARCLAW
South Asian Association for Regional
Co-operation in Law

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The role of human rights related to HIV laws and policy reforms is critical. The fundamental rights and fundamental beliefs guarantee that all persons are equal before the law and are entitled to equal and effective protection of the law and shall not be discriminated against on the ground of race, sex, language, religion, politics or other status is important along with the right to privacy and information. Recognizing the vulnerability and difficulties faced by people who are most-at-risk and living with HIV, I am confident the *South Asia Regional Advocacy Framework and Resource Guide: HIV, Human Rights and Sexual Orientation and Gender Identity* will guide the way for changing our attitude and treatment of people of diverse sexual orientation and gender identify in South Asia.

While science is in the process of discovering a suitable cure for this ailment, it is only appropriate that those who are most vulnerable and living with HIV - live a life of dignity. Effective public health measures have managed to combat the spread and impact of HIV to a certain extent. However, HIV is not merely a medical problem - it requires a multi-faceted and holistic response. We must understand the law and barriers. Combating it demands integrated approaches of social, cultural, economic and human rights perspectives. Therefore, stakeholders and particularly the judiciaries in the region must inspire the trust and confidence of the people and enhance access to justice without undue delay. *WE should neither delay nor deny justice.*

Dialogue is the beginning of understanding that leads to participation and breaking barriers -we are part of the solution. As an outcome of the South Asia Regional Roundtable on Legal and Policy Barriers to the HIV Response held in Kathmandu, Nepal on 8-19 November 2011 and a follow-up to the *Global Commission on HIV and the Law Risk, Rights and Health* released in 2012, this Framework is a united effort by SAARCLAW, the United Nations Development Programme (UNDP) and the Global Fund to secure social justice and herald an era of hope under inclusive democracy, social justice and protection of individual rights in the region.

I would like to call on our colleagues to explore opportunities so that right may be done to all manner of people according to law and preserve personal dignity.

(Sonam Tobgye)

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SAARCLAW

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Rajesh Jha Consultant India	Midnight Poonkasetwatana Asia Pacific Coalition on Male Sexual Health Thailand	Rajiv Dua Population Services International Nepal
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Regional Advocacy Framework

INTRODUCTION

Individuals and populations need knowledge, means and power in order to respond effectively to HIV. They have the right to knowledge that HIV exists and that programmes and services can support them to respond to it; they have the right to means of protection against HIV acquisition and transmission (including condoms, clean needles, HIV testing and antiretroviral medicines) and they need the power to support one another and to access the services they need in order to stay healthy, whether they are living with HIV or not. Moreover, individuals and populations have the right to access all of these things under international law. Governments that fail to ensure that such rights are realized should be held accountable.

Laws and policies that deny men who have sex with men (MSM) and transgender people equal protection under the law and equal access to health programmes and services have been identified as major barriers to HIV prevention and care.^{1,2,3,4} These laws and policies often reflect the views, attitudes and behaviours of the community (and police and legal structures) and also play a role in shaping these views, attitudes and behaviours.



MSM and transgender people in many countries in South Asia experience marginalization, violence, harm and even death, either because of their lack of access to health, or directly as a result of violence. Rather than providing protection to key HIV-affected populations (those most vulnerable to HIV, such as sex workers, MSM, transgender people, prisoners and migrants⁵), many governments enact laws or permit behaviours that contravene international human rights standards, such as criminalizing same-sex activity, enforcing laws that prohibit gender nonconformity and criminalizing sex work. The presence of punitive laws or the absence of protective laws can create environments for punishment or persecution by governments, communities and police. MSM and transgender people in Asia remain marginalized and stigmatized even when same-sex sexual activity is not specifically illegal. Most countries in the region do not provide specific protection under anti-discrimination or human rights laws for MSM and transgender people, leaving them vulnerable to abuse, victimization and neglect.⁶

1 amfAR Global consultation on MSM and HIV/AIDS Research, 2008

2 Technical Guidance on Combination HIV Prevention for MSM, PEPFAR, 2011

3 Global Commission on HIV and the Law, UNDP, 2011

4 Prevention and treatment of HIV and other sexually transmitted infections among men who have sex with men and transgender people: recommendations for a public health approach, WHO, 2011

5 Global Commission on HIV and the Law, UNDP, 2011

6 Clinical Guidelines for Sexual Health Care of MSM, IUSTI, 2005

There are clear areas of progress which illustrate that effective advocacy can have an impact on the creation of enabling legal and social environments for MSM and transgender people. For example, the City Corporation of Mumbai funds one of Asia's largest MSM community organizations, the Humsafar Trust; the official recognition of third gender in Nepal includes recent moves by the Home Ministry to issue citizenship documents for sexual and gender minorities (as an 'other' category) for those that request it without the need to submit any medical or other evidence; and MSM and transgender people community organizations are emerging across Pakistan.

PURPOSE OF THIS FRAMEWORK

This framework was developed to assist organizations in South Asia to work together on advocacy priorities for removing the legal and policy barriers that prevent MSM and transgender people from enjoying the right to the highest attainable standard of physical and mental health, particularly in relation to access to HIV prevention, treatment and care. It is focused as much on governments and national AIDS Programmes as it is on community organizations, as partnerships between governments and civil society have proven to be an effective vehicle for change in this area.

It provides the background commitments, guidelines and evidence that can support advocacy efforts and a process that groups and individuals can follow to identify what needs to change, who they can work in partnership with and what strategies they can use.

It focuses on the contribution that human rights and the law make to health for individuals and communities. "HIV thus represents a good example of the multi-faceted relationship between health and human rights. It shows how health policies and legislation can impact detrimentally on human rights, while violations of human rights can detrimentally affect health"⁷

HOW TO USE THIS FRAMEWORK

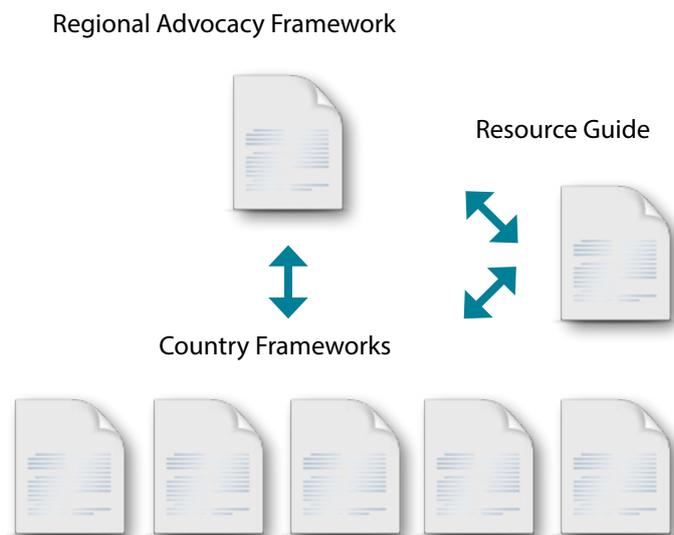
The Framework outlines global and regional commitments related to HIV, human rights and sexual orientation and gender identity and provides evidence for effective inclusion of specific MSM and transgender people strategies in regional, national and community-level HIV responses. It provides suggestions for partnerships that would make advocacy more successful and outlines some indicative advocacy strategies. Obviously, national and local South Asian organizations are more familiar with the particular issues in their area and the particular barriers that exist for MSM and transgender people so, rather than prescribing particular approaches, the Framework provides a guide to a process they can follow to develop their own priorities, partnerships and strategies.

The Framework is supported by a Resource Guide (the Guide) that summarizes key global and regional commitments and guidelines and provides examples of work that has been done to remove barriers for MSM and transgender people to access health and welfare services. The Resource Guide sets out the key clauses and sections of each relevant commitment document, the key sections of guidelines or standards that refer to MSM and transgender people and some of the elements of strategies that have been used in the region to promote access to health for

⁷ Anand Grover, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Human Rights Council, United Nations General Assembly 17th Session, Agenda Item 3, 2011

MSM and transgender people. The Guide also contains country summaries of commitments and interventions from India, Sri Lanka, Nepal, Bangladesh and Bhutan.

Using the Regional Framework as a template, national organizations will be assisted to develop country-level Advocacy Frameworks. Groups and organizations working in advocacy partnerships can use the Framework to develop partnership and organizational action plans to further the advocacy priorities they have developed. Country frameworks have also been developed and these documents relate to each other as follows:



The Framework is divided into the following sections:

- Global Commitments (brief summary)
- Regional Commitments (brief summary)
- Rationale for including specific attention to MSM and transgender people in HIV responses
- Five Domains for Advocacy (and under each Domain)
 - Key Priorities
 - Groups with whom to work in partnership
 - Key strategies and points of influence
 - Key resources

SECTION 1: GLOBAL COMMITMENTS

Many of the barriers that MSM and transgender people experience to accessing health and welfare services contravene their basic rights. Countries are often signatories to global documents that aim to protect rights, but for many complex reasons, MSM and transgender people are often considered not covered by these rights. The general section below refers to commitments that address human rights for all without specifically refer to the rights of MSM and transgender people. This is followed by a section that summarizes key HIV and AIDS commitments and a final section that sets out key documents related to the human rights of sexual minorities. Full references for each document, along with key quotes, are set out in the Reference Guide.

GENERAL

Universal Declaration of Human Rights (1948)

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination

International Covenant on Economic, Social and Cultural Rights (1966)

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

1. Remuneration which provides all workers, as a minimum, with:
 - a. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - b. A decent living for themselves and their families in accordance with the provisions of the present Covenant;
2. Safe and healthy working conditions;

3. Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
4. Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

International Covenant on Civil and Political Rights (1966)**Article 1**

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

HIV AND AIDS**The Paris Declaration (1994)**

During the 1994 Paris AIDS Summit a joint commitment was made by all Governments and Representatives present. We, the Heads of Government or Representatives of the 42 States assembled in Paris on 1 December 1994 *Solemnly Declare*:

- our obligation as political leaders to make the fight against HIV and AIDS a priority,
- our obligation to act with compassion for and in solidarity with those with HIV or at risk of becoming infected, both within our societies and internationally,

- our determination to ensure that all persons living with HIV and AIDS are able to realize the full and equal enjoyment of their fundamental rights and freedoms without distinction and under all circumstances,
- our determination to fight against poverty, stigmatization and discrimination,

Undertake in our national policies to:

- protect and promote the rights of individuals, in particular those living with or most vulnerable to HIV and AIDS, through the legal and social environment,
- ensure equal protection under the law for persons living with HIV and AIDS with regard to access to health care, employment, education, travel, housing and social welfare

Millennium Development Goal 6 (1994)

Goal 6 - Combat HIV/AIDS, Malaria and other diseases

Target 6.A:

Have halted by 2015 and begun to reverse the spread of HIV/AIDS

- The spread of HIV appears to have stabilized in most regions, and more people are surviving longer
- Many young people still lack the knowledge to protect themselves against HIV
- Empowering women through AIDS education is indeed possible, as a number of countries have shown
- In sub-Saharan Africa, knowledge of HIV increases with wealth and among those living in urban areas
- Disparities are found in condom use by women and men and among those from the richest and poorest households
- Condom use during high-risk sex is gaining acceptance in some countries and is one facet of effective HIV prevention
- Mounting evidence shows a link between gender-based violence and HIV
- Children orphaned by AIDS suffer more than the loss of parents

Target 6.B:

Achieve, by 2010, universal access to treatment for HIV/AIDS for all those who need it

- The rate of new HIV infections continues to outstrip the expansion of treatment
- Expanded treatment for HIV-positive women also safeguards their newborns

UNGASS Declaration on HIV/AIDS (2001)

In 2001, all UN member states adopted the UNGASS Declaration of Commitment (DOC) "Global Crisis–Global Action" with the goal of reversing the AIDS epidemic. The Declaration contained time-bound commitments.

Political Declaration on HIV/AIDS (2006)

In June 2006 Heads of State and Government and representatives of States and Governments participated in the comprehensive review of the progress achieved in realizing the targets set out in the Declaration of Commitment on HIV/AIDS. UN Member States reaffirmed their commitment to achieving the goals set out in the DoC and developed the Political Declaration on HIV/AIDS, which contained a set of political commitments.

Getting to Zero, UNAIDS 2011–2015 Strategy (2010)

The 2010 UNAIDS Getting to Zero Strategy highlighted global commitments to HIV/AIDS and outlined three strategic directions with corresponding goals. The three strategic directions are: zero new infections; zero AIDS-related deaths; and, zero discrimination.

Political Declaration of HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS (2011)

The United Nations High Level Meeting on HIV/AIDS was held on 8–10 June 2011 in New York to review the progress achieved in meeting the commitments of the 2001 Declaration of Commitment on HIV/AIDS and the 2006 Political Declaration on HIV/AIDS. The Political Declaration on HIV and AIDS saw the 193 Member States of the United Nations commit to redouble efforts to achieve universal access for HIV prevention, treatment, care and support by 2015 with a view to fulfilling Millennium Development Goal 6. This Political Declaration is the first ever United Nations General Assembly document to specifically refer to MSM.

SEXUAL MINORITIES

Yogyakarta Principles (2007)

In November 2006 a group of human rights experts met in Yogyakarta, Indonesia and developed a set of principles on the application of human rights laws in relation to sexual orientation and gender identity. The Yogyakarta Principles affirm binding international legal standards that all states are obligated to comply with.

The Global Fund Strategy in Relation to Working with Sexual Orientation and Gender Identities (2009)

In 2009 the Global Fund board approved the Strategy in Relation to Sexual Orientation and Gender Identity (SOGI). This strategy identified that MSM, transgender people and sex workers often have a difficult time accessing Global Fund grant money and have limited access to Global Fund decision making bodies exacerbating the barriers to access to funding. The Strategy recommends 19 actions that the Global Fund Secretariat, its governance structures and its partners can take to better meet the needs of SOGI.

UNAIDS Action Framework – universal access for MSM and transgender people (2009)

The UNAIDS Action Framework was developed with a view of achieving universal access to HIV prevention, treatment, care and support for MSM and transgender people in order to achieve universal access for all. The Strategy highlights that actions must be grounded in an understanding of and commitment to human rights and that actions must be informed by evidence. Action is

required by a broad range of stakeholders including affected communities, allies, governments, the private sector and the UN family.

PEPFAR Technical Guidance on Combination Prevention for MSM (2010)

The United States Global Leadership Against HIV/AIDS, TB and Malaria Reauthorization Act of 2008 recognized the need for PEPFAR to provide assistance for HIV/AIDS education programmes and training to prevent the transmission of HIV among MSM. PEPFAR's Technical Guidance on Combination HIV Prevention for MSM identifies a set of core prevention interventions that should be delivered by partner countries to adequately address the needs of MSM. Country Teams are expected to build the capacity of partner countries in order to implement these interventions in a non-discriminatory manner. The Technical Guidance document highlights that access to services must be equitable, voluntary and non-discriminatory and that PEPFAR programmes should involve MSM and support existing MSM networks. The guidance identifies core elements of a comprehensive package of HIV-prevention services and encourages PEPFAR programmes to adopt best practices for MSM.

Human Rights Considerations in Addressing HIV Among Men who Have Sex with Men USAID/AIDSTAR 1 (2011)

This Technical Brief provides guidance on rights-based approaches to HIV programming for MSM. It identifies three strategies that are necessary for rights-based programming and provides practical examples of ways in which programmes have improved health and human rights environments for MSM.

Global Commission on HIV and the Law – Risk, Rights and Health (2012)

In June 2011, a group of experts in the field of HIV and the law undertook an 18-month review of global HIV-related legal environments. The Commission reported findings and made recommendations to aid governments and international bodies in the creation of enabling legal environments.

SECTION 2: REGIONAL COMMITMENTS

SAARC Regional Strategy on HIV and AIDS (2006–2010)

Guiding Principles:

- Involve people living with HIV in all types of leadership and include young, women and members of vulnerable populations.
- Generate/ provide technical support for Member States for policy and programmes for targeted and effective BCC strategies in prevention and health promotion (treatment, care and support) "The right prevention services for right people at the right time".
- Strong voice, policy and legislation support against gender inequality, stigma, discrimination, marginalization and criminalization of vulnerable populations.

UN ESCAP Resolution 66/10: A Regional call for action to achieve universal access to HIV prevention, treatment, care and support in Asia and the Pacific (2010)

Calls upon all members and associate members:

To ground universal access in human rights and undertake measures to address stigma and discrimination, as well as policy and legal barriers to effective HIV responses, in particular with regard to key affected populations;

Requests the Executive Secretary:

To support members and associate members in their efforts to enact, strengthen and enforce, as appropriate, legislation, regulations and other measures to eliminate all forms of discrimination against people living with HIV and AIDS and other key affected populations, and to develop, implement and monitor strategies to combat stigma and exclusion connected with the epidemic.

Key points:

- Ground universal access in human rights
- Undertake measures to address stigma and discrimination, as well as policy and legal barriers to effective HIV responses, in particular with regard to key affected populations
- Support efforts to enact, strengthen and enforce legislation, regulations and other measures to eliminate all forms of discrimination against people living with HIV and AIDS and other key affected populations
- Develop, implement and monitor strategies to combat stigma and exclusion connected with the epidemic

UN ESCAP Resolution 67/9: Asia-Pacific regional review of the progress achieved in realizing the Declaration of Commitment on HIV/AIDS and the Political Declaration on HIV/AIDS (2011)

Calls upon members and associate members to further intensify the full range of actions to reach the unmet goals and targets of the Declaration of Commitment on HIV/AIDS and the Political Declaration on HIV/AIDS by:

- Developing national strategic plans and establish strategic and operational partnerships at the national and community levels to scale up high-impact HIV prevention, treatment, care and support to achieve 80 per cent coverage for key affected populations with a view of the universal access target;
- Initiating, as appropriate, in line with national priorities, a review of national laws, policies and practices to enable the full achievement of universal access targets with a view to eliminate all forms of discrimination against people at risk of infection or living with HIV, in particular key affected populations;
- Increasing the effectiveness of national responses by prioritizing high-impact interventions for key affected populations.

Asia-Pacific High-Level Intergovernmental Meeting on AIDS on the Assessment of Progress Against Commitments in the Political Declaration on HIV/AIDS and the Millennium Development Goals (2012)

Sets out a Regional Framework for Action:

2012 – National multi-sectorial consultations on policy/legal barriers

2013 – Participatory and inclusive national reviews on implementing the Political Declaration, ESCAP resolutions 66/10 and 67/9

Early 2014 – Regional overview of progress in meeting the commitments in the Political Declaration, ESCAP resolutions 66/10 and 67/9

Late 2014 – Inclusive regional intergovernmental review meeting of national efforts and progress

May 2015 – Seventy-first session of ESCAP

September 2015 – UN General Assembly Review MDGs

SECTION 3: THE CASE FOR INCLUSION OF SPECIFIC MSM AND TRANSGENDER POPULATION STRATEGIES IN HIV AND AIDS RESPONSES

This section aims to assist individuals and organizations to strengthen arguments for addressing the many barriers that exist for MSM and transgender people to access health and welfare services.

Rates of HIV among MSM and transgender people in many countries across the globe are significantly higher than rates in all adults. Some of the available data is summarized in Figure 1.

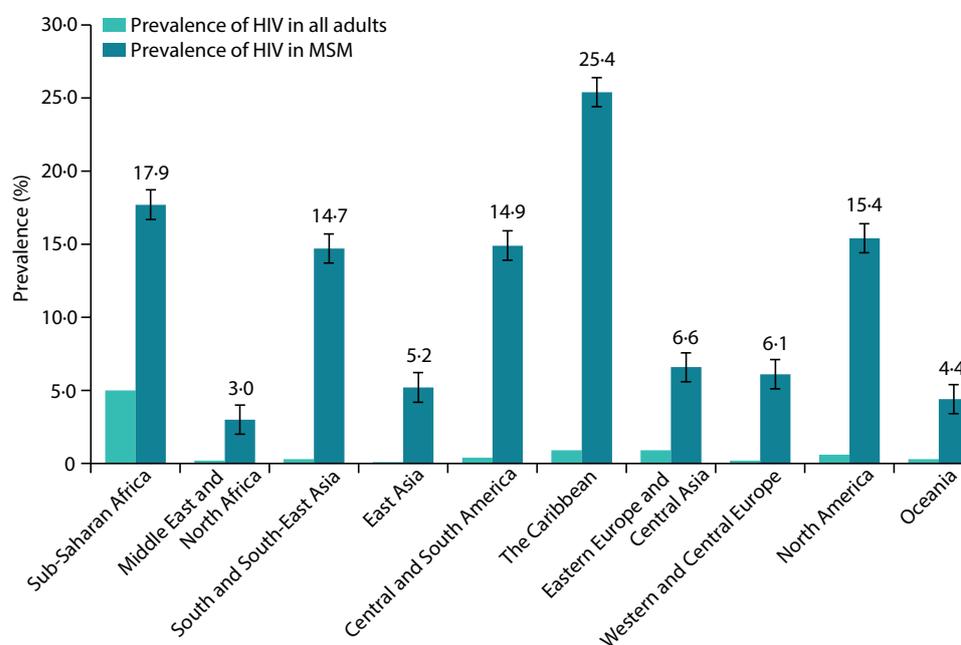
The table below provides a sample of data from UNDP's MSM Country Snapshots, 2012 that highlight the high prevalence of HIV among MSM and transgender people in the region.⁸

Country	MSM HIV Prevalence	Number of times higher than whole of population prevalence
India	4.4%	14.8
Pakistan	10.9%	12.7
Sri Lanka	0.9%	9.0
Nepal (Capital City)	3.8% ⁹	10.0

⁸ HIV and Men who have Sex with Men: Country Snapshots, UNDP, 2012

⁹ A more thorough and comprehensive study is needed to find the actual MSM HIV infection rate for the entire country.

Figure 1: Global prevalence of HIV among MSM compared with regional adult prevalence reported by UNAIDS.¹⁰



Key concerns:

- HIV prevalence rates among transgender people are also much higher than MSM in many countries due to:
 - higher levels of marginalization, stigma and discrimination in health and welfare services
 - greater disconnection from education and work opportunities
- ‘Treatment as Prevention’ efforts are unlikely to succeed unless MSM and transgender people get better access to VCT and lifelong treatment and care
- Significant access barriers still exist for these populations across South Asia
- A direct connection between human rights and service access – MSM and transgender people are unlikely to come forward for testing and other services in a hostile and unsafe environment.

The APCOM/UNDP study of legal environments, human rights and HIV responses among MSM and transgender people point to significant barriers to accessing these populations including:

- HIV prevention services are interrupted as a result of police harassment of outreach workers, many of whom are MSM or transgender peer educators.
- HIV prevention education activities are restricted by police on the grounds that the activities encourage or ‘aid and abet’ illegal acts of male-to-male sex or sex work.
- Condoms and lubricants are confiscated by police as evidence of sex work or of illegal male-to-male sex.

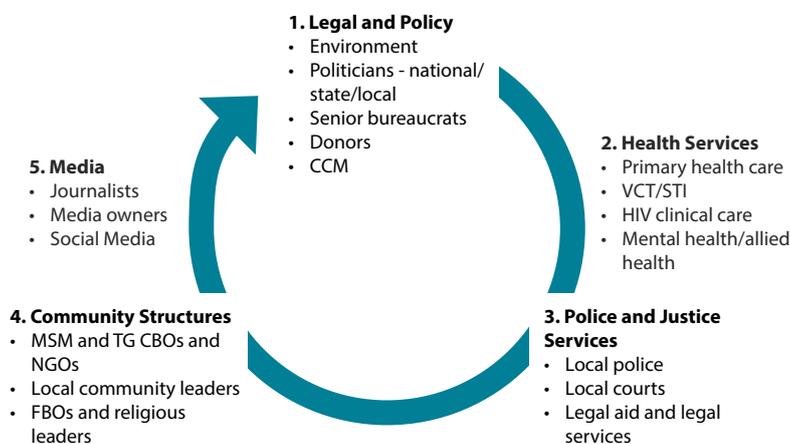
¹⁰ Chris Beryrer, Stefan Baral, Frits van Griensven, Steven Goodreau, Suwat Charilyertsak, Andrea Wirtz, Ron Brookmeyer, “Global epidemiology of HIV infection in men who have sex with men”, Lancet July 2012

- HIV materials are censored, and police raids occur on events and venues where HIV education takes place.
- Dissemination of health promotion information on safer sex practices is restricted on the grounds that it may be considered to be in breach of obscenity laws.¹¹

SECTION 4: KEY DOMAINS FOR ADVOCACY

Stigma and discrimination is complex and operates at many levels. Breaking down access barriers requires an effort across multiple fronts. To assist in determining priorities and strategies, this Framework identifies five key domains for action:

- 1. Legal and Policy Environment:** Sensitization of legislators, parliamentarians, judiciary and law enforcement agencies to work towards replacing the current punitive laws, policies and practices with more rights-based approaches.
- 2. Health Services:** Enhanced capacity of health system to respond to health concerns of MSM and transgender people; the need for expanding coverage to deliver HIV prevention, treatment, care and allied health services.
- 3. Local Police and Justice Services:** Turning good national policy into good local practice – co-operation of local police in HIV outreach efforts, reductions in harassment, unnecessary arrest, violence, blackmail and corruption, improved responses to reports of crimes against MSM and transgender people. Fair treatment in the justice system. Legal support services available.
- 4. Community Structures:** Addressing stigma and discrimination by engaging with community-based organizations, faith-based groups and other stakeholders to ensure people of diverse sexual orientation and gender identities can access HIV and other social services with dignity and equity.
- 5. Media:** Engaging with public media to ensure more balanced and respectful portrayal of HIV, MSM and transgender issues resulting in a reduction of stigma and discrimination. Working to ensure that relevant health information for MSM and transgender people can be published.



¹¹ Legal environments, human rights and HIV responses among men who have sex with men: An agenda for action, APCOM/UNDP 2010

Domains for Advocacy

These domains are not separate or discrete. Attitudes and actions within one domain affect, or are influenced, by attitudes and actions in another. Tackling stigma and discrimination against MSM and transgender people not only involves working within these domains, but also on the relationships between them.

FRAMEWORK FOR ACTION IN EACH DOMAIN

The framework for action is a process guide to assist advocacy organizations to develop their own advocacy strategies. We recommend following these steps for each domain and have provided some examples as well as resources to assist in the process:

1. Determine key priorities
2. Identify groups with whom to work in partnership
3. Determine key strategies and points of influence
4. Draw on key resources to build the case for change

DOMAIN 1 – LEGAL AND POLICY ENVIRONMENT

Key Priorities

Regional priorities that were identified at **The South Asia Roundtable Dialogue ‘Legal and Policy Barriers to the HIV Response’**:

The Roundtable Dialogue, held in Kathmandu from 8–10 November 2011, was a joint venture of SAARCLAW, IDLO, UNDP and UNAIDS. The Roundtable created a forum for the examination and evaluation of legal and policy barriers to the HIV response in South Asia. The Roundtable identified key legal and policy issues as barriers to the HIV response as well as specific recommendations linked to these issues.

Summary of the key legal and policy issues:

- the criminalization of behaviours of key populations at higher risk of HIV exposure;
- law enforcement policy and practices;
- lack of sensitivity, knowledge and awareness by law and justice sector leaders and stakeholders;
- the gap between black letter law and practice; and,
- the clear need for greater coordination and collaboration within the law and justice sector.

Summary of key recommendations:

- decriminalize conduct linked to key populations at higher risk through appropriate legislative processes or judicial interventions. Work simultaneously on short term initiatives to address and mitigate the impact of relevant criminal laws;
- sensitize and disseminate information on the rights and issues of people living with HIV (PLHIV) and key populations at higher risk to law and justice sector stakeholders and healthcare providers;

- recognize the need for space for key populations at higher risk to collaborate (strength in synergies);
- empower PLHIV and key populations at higher risk with knowledge about their rights under the law and the mechanisms that they may utilize to access and defend these rights;
- empower human rights institutions with the necessary and appropriate statutory powers to enable them to address and respond to diverse legal and ethical issues and implications pertaining to human rights;
- advocate for constitutional challenges and public interest litigation, recognizing the role of judicial leadership;
- sensitize the media about the objectives of a legal enabling environment, and the rights of key populations at higher risk and PLHIV;
- advocate for healthcare providers and law and justice sector authorities to commit to a public health approach; and,
- strengthen the legal enabling environment.

The following is a summary of key recommendations made by the **Global Commission on HIV and the Law** to ensure an effective, sustainable response to HIV that is consistent with human rights obligations.

MSM:

- Countries must reform their approach towards sexual diversity. Rather than punishing consenting adults involved in same sex activity, countries must offer such people access to effective HIV and health services and commodities.

Countries must:

- Repeal all laws that criminalise consensual sex between adults of the same sex and/or laws that punish homosexual identity.
- Respect existing civil and religious laws and guarantees relating to privacy.
- Remove legal, regulatory and administrative barriers to the formation of community organisations by or for gay men, lesbians and/or bisexual people.
- Amend anti-discrimination laws expressly to prohibit discrimination based on sexual orientation (as well as gender identity).
- Promote effective measures to prevent violence against men who have sex with men.

Transgender People:

- Countries must reform their approach towards transgender people. Rather than punishing transgender people, countries must offer transgender people access to effective HIV and health services and commodities as well as repealing all laws that criminalise transgender identity or associated behaviours.

Countries must:

- Respect existing civil and religious laws and guarantees related to the right to privacy.

- Repeal all laws that punish cross-dressing.
- Remove legal, regulatory or administrative barriers to formation of community organisations by or for transgender people.
- Amend national anti-discrimination laws to explicitly prohibit discrimination based on gender identity (as well as sexual orientation).
- Ensure transgender people are able to have their affirmed gender recognised in identification documents, without the need for prior medical procedures such as sterilisation, sex reassignment surgery or hormonal therapy.

Groups with Whom to Work in Partnership

The following are suggestions of groups with whom to work in partnership on issues related to laws and regulations affecting sexual minorities:

- South Asian Association for Regional Cooperation (SAARC) and South Asian Association for Regional Cooperation in Law (SAARCLAW)
- The Global Fund to Fight AIDS, Tuberculosis & Malaria
 - Country Coordination Mechanism (CCM)
- Regional offices of UNAIDS and its Co-sponsors (e.g. UNICEF on MSM/transgender people under 18 years of age; UNFPA on Sexual and Reproductive Health services for MSM/transgender people; UNDP on human rights and law)
- Donors (USAID, DfID, AusAID, key international foundations)
- South Asia GLBT Network
- Law Enforcement and HIV Network (LEAHN)
- NIPSA (Network for Improving Policing in South Asia)
- Human Rights Watch
- International Development Law Organization (IDLO)
- The Asia Pacific Coalition on Male Sexual Health (APCOM)

Key Regional Strategies and Points of Influence

Some regional strategies and points of influence that can aide in the sensitization of law makers are listed below:

- Share successes in formal recognition of the third gender (identity papers, inclusion in voting, judicial recognition of rights) across countries
- Advocate to ensure that national reviews of legal and policy barriers to access to HIV services and national, multi-sectorial consultations on same (pursuant to the ESCAP commitments) address issues faced by MSM and transgender people, and that MSM and transgender people participate in regional reviews of progress

- Strengthen attention to MSM and transgender interventions in next SAARC Regional HIV Strategy and in future reviews of National Strategic Plans on HIV
- Package and share strategic information on impact of increased intervention coverage on HIV prevention and care among MSM and transgender people
- Demonstrate connection between stigma and discrimination, structural interventions and service use and access by MSM and transgender people
- Collect and present data on rights violations experienced by MSM and transgender people from community legal services across the region
- Engage with National Human Rights Institutions to monitor, investigate and follow up on rights issues impacting on MSM/transgender people

Key Resources

The following resources are only a select few that can be used to influence change in the legal and policy environment. Details of the documents below, as well as additional resources, can be found summarized in the Resource Guide:

- Access to HIV Prevention and Treatment for Men Who Have Sex with Men, Findings from the 2012 Global Men's Health and Rights Study (MSMGF, 2012)
- International Consultation on Policing of Most-at-risk Populations (IDLO, 2012)
- Gender Identity and Violence in MSM and Transgender: Policy Implications for HIV Services (section on structural violence) (USAID/HPI, 2009)
- Gender-based Violence, Criminal Law Enforcement and HIV (Global Commission on HIV and the Law, 2012)
- Human Rights, the Law and HIV among Transgender People (Global Commission on HIV and the Law, 2012)

DOMAIN 2 – HEALTH SERVICES

Key Priorities

The following are suggestions of key priorities in the domain of health services. Advocacy organizations are encouraged to prioritize issues that are relevant to their region:

- Reducing (and monitoring) the high levels of stigma and discrimination in health services
- Increasing knowledge of HIV status by increasing access of MSM and transgender people to VCT and ongoing support
- Promoting models of good access and quality for MSM and transgender in primary care/STI services – often a blend of CBO and mainstream services
- Analyse, describe and promote innovative service architecture models – MSM and transgender CBOs working with public and private health services
- Increase knowledge of HIV status by promoting rapid HIV testing models in MSM and transgender populations with a clear connection to onward treatment, care and support

Groups with Whom to Work in Partnership

The following are suggestions of groups with whom to work in partnership on issues related to health services:

- WHO Regional Office for South-East Asia (SEARO)
- Asia Pacific Coalition on Male Sexual Health (APCOM)
- Project DIVA Community Representative Steering Committee
- Regional STI Society
- Donors
- Asia Pacific Network of People Living with HIV/AIDS (APN+)

Key Regional Strategies and Points of Influence

Some regional strategies and points of influence related to health services are listed below; this is by no means a comprehensive list and should act as a guide only:

- Document and promote regionally relevant and innovative models of health service provision to MSM and transgender people
- Establish and promote regional standards of MSM and transgender HIV prevention and care
- Identify barriers and potential solutions to 'Treatment as Prevention' for MSM and transgender people with HIV
- Develop and promote holistic healthcare models for transgender people

Key Resources

Details of the documents below as well as additional resources can be found summarized in the Resource Guide:

- Clinical Guidelines for Sexual Health Care of MSM (International Union against Sexually Transmitted Infections, Asia Pacific Branch, 2005)
- Health sector response to HIV/AIDS among MSM (WHO SEARO/WPRO, 2009)
- Developing a Comprehensive Package of Services to Reduce HIV among Men who have Sex with Men (MSM) and Transgender (TG) Populations in Asia and the Pacific – Regional Consensus Meeting (Bangkok) (UNDP, 2009)
- Ensuring universal access to comprehensive HIV services for MSM in Asia and the Pacific (amfAR 2009)
- Priority HIV and sexual health interventions in the health sector for MSM and TG people in the Asia-Pacific Region (WHO, 2010)
- HIV/AIDS Among Men who Have Sex with Men and Transgender Populations in South East Asia – the current situation and national responses (WHO SEARO, 2010)

- Prevention and Treatment of HIV and Other Sexually Transmitted Infections Among Men Who Have Sex with Men and Transgender People – Recommendations for a public health approach (WHO, 2011)

DOMAIN 3 – LOCAL POLICE AND JUSTICE SERVICES

Key Priorities

Key priorities related to local police and justice services:

- Local police support for outreach and other services working with MSM and transgender people
- Increased access for MSM and transgender people to legal services and avenues for seeking redress for rights violations
- Strategic information on local police discrimination, violence and harassment driving policy and procedure reform
- Local police are sensitized to key law enforcement concerns of MSM and transgender people and police practices are reviewed and reformed as necessary to ensure a non-discriminatory response to these by police.

Groups with Whom to Work in Partnership

The following are suggestions of groups with whom to work in partnership on issues related to translating good national policies into good local practice:

- Network for Improving Policing in South Asia (NIPSA)
- Project DIVA Community Steering Representative Committee
- International Development Law Organization (IDLO)
- United Nations Office on Drugs and Crime (UNODC)
- United Nations Development Programme (UNDP)
- Joint United Nations Programme on HIV/AIDS (UNAIDS)
- Law Enforcement and HIV Network (LEAHN)
- Asia Regional Harm Reduction Network (for lessons in working with police on harm reduction)

Key Strategies and Points of Influence

- Document and promote effective models for police service and MSM and transgender CBO cooperation
- Identify modules on working with MSM and transgender people in police training and promote as regional best practice
- Document and promote models for better access of MSM and transgender people to legal services

- Engage with National Human Rights Institutions

Key Resources

- Toolkit for Scaling Up HIV-related Legal Services - includes India case study (IDLO, 2009)
- HIV-Related Legal Services: South Asia Video Conference report (IDLO, 2012)

DOMAIN 4 – COMMUNITY STRUCTURES

Key Priorities

Some key priorities when addressing stigma and discrimination against MSM and transgender people are the following:

- Greater role for MSM and transgender CBOs in HIV prevention and care
- Better access for MSM and transgender people to mainstream welfare services (often run by faith-based and religious NGOs)
- Religious leaders taking a key role in promoting tolerance and respect for MSM and transgender people
- Community leaders take a key role in breaking down stigma and discrimination

Groups with Whom to Work in Partnership

When addressing stigma and discrimination at a regional level it is important to engage with NGOs, CBOs and faith-based organizations. Some suggestions are:

- The Global Fund to Fight AIDS, Tuberculosis & Malaria
- Project DIVA Community Representative Steering Committee
- UNAIDS and Co-sponsors
- Donors, International Foundations and Bilaterals
- Global Forum on MSM and HIV (MSMGF)
- APN+

Key Strategies and Points of Influence

- Collect, analyse and disseminate models for MSM and transgender self-organization
- Develop and cost collaborative models between MSM and transgender NGOs and CBOs and other services
- Improve strategic information about contribution of MSM and transgender NGOs and CBOs to HIV prevention and care
- Collect, analyse and disseminate information on positive faith-based responses to HIV among MSM and transgender people

Key Resources

Key resources to guide advocacy work in this domain are the following:

- Scaling up Effective Partnerships: a guide to working with faith-based organizations in the response to HIV (Ecumenical Advocacy Alliance, 2006)
- The Power to Tackle Violence: Avahan's Experience with a Community-led Crisis Response in India (Avahan, 2009)
- Tackling HIV-related Stigma and Discrimination in South Asia (World Bank, 2010)
- Ensuring Universal Access to Comprehensive HIV Services for MSM in Asia and the Pacific: Determining Operations Research Priorities to Improve HIV Prevention, Treatment, Care, and Support Among Men Who Have Sex With Men (amfAR, 2011)
- Religious Leadership in Response to HIV (www.hivcommitment.net)

DOMAIN 5 – MEDIA

Key Priorities

Some key priorities to think about when engaging with the media to ensure a more balanced and respectful representation of HIV, MSM and transgender issues are the following:

- Improved balance of media coverage of HIV among MSM and transgender people and of MSM and transgender issues in general
- Decreased stigmatization and harm to MSM and transgender people by media

Groups with Whom to Work in Partnership

- National Media and press organizations
- NGOs who target media practice (e.g. CFAR, SAATHI)
- APN+
- APCOM
- UNAIDS and Co-sponsors

Key Strategies and Points of Influence

Engaging with the media should be with the intention of reducing stigma and discrimination of sexual minorities and people living with HIV. Some strategies of engagement are:

- Development of a range of positive media stories about MSM and transgender people
- Promotion of attention to MSM and transgender people in media codes of practice
- Development of regional media awards or other good practice recognition strategies

Key Resources

- A Framework for Media Engagement on Human Rights, MSM and Transgender Persons in South Asia (UNDP/CFAR, 2013)
- HIV/AIDS Media Guide (International Federation of Journalists, 2006)
- Media Reference Guide (Gay and Lesbian Alliance Against Defamation – GLAAD, 2010)

Resource Guide

ABOUT THIS GUIDE

This guide has been prepared to provide advocates from civil society, government and the private sector in South Asia with an easy-to-use resource guide to the literature that is available to them to assist them in their work to develop and maintain an effective network of HIV prevention and care services and programmes among transgender people and gay men and other men who have sex with men.

It sets out the global and regional commitments and guidelines that can be used to strengthen arguments for addressing the many access barriers that exist for these populations, and examples of the work that has been done to remove these barriers.

It also contains country summaries of commitment and interventions for India, Sri Lanka, Nepal, Bangladesh and Bhutan.

USING THIS GUIDE

Documents are arranged in levels: global, regional and national. Key commitments, standards or guidance points are summarized and there is a link available to the source document.

Country-level initiatives are summarized, with a link to the key implementing agency, where applicable.

1. GLOBAL

INTERNATIONAL HUMAN RIGHTS DECLARATIONS

The Universal Declaration of Human Rights (United Nations, 1948)

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

All Articles are relevant, but specifically:

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

International Covenant on Economic, Social and Cultural Rights, 1966 (United Nations High Commissioner for Human Rights, 1966)

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

All Articles are relevant, but specifically:

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- a. Remuneration which provides all workers, as a minimum, with:
 - i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

- ii. A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- b. Safe and healthy working conditions;
- c. Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- d. Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
 - a. To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
 - b. Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - a. The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - b. The improvement of all aspects of environmental and industrial hygiene;
 - c. The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - d. The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The Right to the Highest Attainable Standard of Health, General Comment No 14, 2000 (UN Economic and Social Council, 2000)

Preamble

The Special Comment on the right to the highest attainable standard of health sets out standards for accessibility in four areas: non-discrimination; physical accessibility; economic accessibility (affordability); and information accessibility. It pays particular attention to the needs of vulnerable and marginalized groups.

All Articles are relevant, but specifically:

Core obligations:

43. In General Comment No. 3, the Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care. Read in conjunction with more contemporary instruments, such as the Programme of Action of the International Conference on Population and Development, the Alma-Ata Declaration provides compelling guidance on the core obligations arising from article 12. Accordingly, in the Committee's view, these core obligations include at least the following obligations:
- a. To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
 - b. To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
 - c. To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
 - d. To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;
 - e. To ensure equitable distribution of all health facilities, goods and services;
 - f. To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups.

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (UN General Assembly, Human Rights Council, 2011)

Preamble

This document sets out the rationale for a right-based approach to health. It connects the domains of human rights and human development.

It uses the example of HIV and AIDS to show how a rights-based approach can add value to development policies and programmes.

Specific sections:

The 'right to health' framework complements current development approaches by underlying the importance of aspects such as participation, community empowerment and the need to focus on vulnerable populations.

Specific paragraphs:

40. The relationship between the law, public health and human rights has thus been seen as of particular importance in relation to HIV. In an attempt to control the virus and the social practices that result in its spread, laws may be hastily enacted that are only partially successful in achieving behavioural change. The "AIDS paradox" is that: "...one of the most effective laws we can offer to combat the spread of HIV which causes AIDS is the protection of persons living with AIDS, and those about them, from discrimination." Indeed, this paradox does not exist only in respect of laws. Any development intervention designed to combat the spread of HIV which respects the human rights of those directly affected by and those most at risk of HIV, will ultimately be more effective in achieving its stated goals.
41. HIV thus represents a good example of the multi-faceted relationship between health and human rights. It shows how health policies and legislation can impact detrimentally on human rights, while violations of human rights can detrimentally affect health. Thus, policies and legislation which allow for the quarantining of a person who has contracted HIV would infringe on the right to liberty and security of person, while "naming and shaming" people who test positive to HIV, in violation of their right to privacy and confidentiality, creates stigma and deters others from seeking out testing and counselling. This close interrelationship also means that human rights and health-related policies and programmes have a great potential to be mutually reinforcing in the realization of health-related development and the right to health.

**GLOBAL
COMMITMENTS
ON HIV AND AIDS**
The Paris Declaration, 1994 (UNAIDS, 1994)

During the 1994 Paris AIDS Summit a joint commitment was made by all Governments and Representatives present stating, "We, the Heads of Government or Representatives of the 42 States assembled in Paris on 1 December 1994 Solemnly Declare:"

All are relevant, but specifically:

- our obligation as political leaders to make the fight against HIV and AIDS a priority,
- our obligation to act with compassion for and in solidarity with those with HIV or at risk of becoming infected, both within our societies and internationally,
- our determination to ensure that all persons living with HIV and AIDS are able to realize the full and equal enjoyment of their fundamental rights and freedoms without distinction and under all circumstances,
- our determination to fight against poverty, stigmatization and discrimination,
- our determination to mobilize all of society – the public and private sectors, community-based organizations and people living with HIV and AIDS – in a spirit of true partnership,
- our appreciation and support for the activities and work carried out by multilateral, intergovernmental, non-governmental and community-based organizations, and our recognition of their important role in combating the pandemic,

Undertake in our national policies to:

- protect and promote the rights of individuals, in particular those living with or most vulnerable to HIV and AIDS, through the legal and social environment,
- fully involve non-governmental and community-based organizations as well as people living with HIV and AIDS in the formulation and implementation of public policies,
- ensure equal protection under the law for persons living with HIV and AIDS with regard to access to health care, employment, education, travel, housing and social welfare,
- intensify the following range of essential approaches for the prevention of HIV and AIDS:
 - i. promotion of and access to various culturally acceptable prevention strategies and products, including condoms and treatment of sexually transmitted diseases,
 - ii. specific risk-reduction activities for and in collaboration with the most vulnerable populations, such as groups at high risk of sexual transmission and migrant populations.

Millennium Development Goals, 1994 (UN, 2000)

In September 2000, 189 heads of State and Government gathered to reaffirm their commitment to the United Nations. Out of this meeting the General Assembly adopted the United Nations Millennium Declaration which outlined commitments to values and principles; peace, security and disarmament; development and poverty eradication; protecting common environment; human rights; democracy and good governance; protecting the vulnerable; meeting the special needs of Africa; and, strengthening the United Nations (UN General Assembly 55th Session, Agenda Item 60, 2000). The declaration led to the development of the Millennium Development Goals (MDGs), a series of eight time-bound goals with sub-goals which have been adopted by all 191 UN member states.

All Goals are relevant, but specifically:**Goal 6:**

Combat HIV/AIDS, malaria and other diseases

Target 6.A:

Have halted by 2015 and begun to reverse the spread of HIV/AIDS

- The spread of HIV appears to have stabilized in most regions, and more people are surviving longer
- Empowering women through AIDS education is indeed possible, as a number of countries have shown
- Condom use during high-risk sex is gaining acceptance in some countries and is one facet of effective HIV prevention
- Mounting evidence shows a link between gender-based violence and HIV

Target 6.B:

Achieve, by 2010, universal access to treatment for HIV/AIDS for all those who need it

- Expanded treatment for HIV-positive women also safeguards their newborns

UNGASS Declaration of Commitment (DoC) on AIDS, 2001 (United Nations, 2001)

In 2001, all UN member states adopted the UNGASS Declaration of Commitment “Global Crisis-Global Action” with the goal of reversing the AIDS epidemic. The Declaration contained time-bound commitments.

All commitments are relevant, but specifically:

- By 2003, enact, strengthen or enforce, as appropriate, legislation, regulations and other measures to eliminate all forms of discrimination against and to ensure the full enjoyment of all human rights and fundamental freedoms by people living with HIV/AIDS and members of vulnerable groups, in particular to ensure their access to, inter alia, education, inheritance, employment, health care, social and health services, prevention, support and treatment, information and legal protection, while respecting their privacy and confidentiality; and develop strategies to combat stigma and social exclusion connected with the epidemic ; and,
- By 2005, develop and make significant progress in implementing comprehensive care strategies to: strengthen and community-based care, including that provided by the informal sector, and healthcare systems to provide and monitor treatment to people living with HIV/AIDS, including infected children, and to support individuals, households, families and communities affected by HIV/AIDS; and improve the capacity and working conditions of health-care personnel, and the effectiveness of supply systems, financing plans and referral mechanisms required to provide access to affordable medicines, including anti-retroviral drugs, diagnostics and related technologies, as well as quality medical, palliative and psychosocial care.

Political Declaration on HIV/AIDS, 2006 (UN General Assembly 60th session, Agenda Item 45, 2006)

In June 2006 Heads of State and Government and representatives of States and Governments participated in the comprehensive review of the progress achieved in realizing the targets set out in the Declaration of Commitment on HIV/AIDS. UN Member States reaffirmed their commitment to achieving the goals set out in the DoC and developed the Political Declaration on HIV/AIDS, which contained a set of political commitments.

All commitments are relevant, but specifically:

Heads of State and Government and representatives of States and Governments:

- Commit ourselves to overcoming legal, regulatory or other barriers that block access to effective HIV prevention, treatment, care and support, medicines, commodities and services;
- Pledge to promote, at the international, regional, national and local levels, access to HIV education, information, voluntary counseling and testing and related services, with full protection of confidentiality and informed consent, and to promote a social and legal environment that is supportive of and safe for voluntary disclosure of HIV status;

- Commit ourselves to intensifying efforts to enact, strengthen or enforce, as appropriate, legislation, regulations and other measures to eliminate all forms of discrimination against and to ensure the full enjoyment of all human rights and fundamental freedoms by people living with HIV and members of vulnerable groups, in particular to ensure their access to, inter alia, education, inheritance, employment, health care, social and health services, prevention, support and treatment, information and legal protection, while respecting their privacy and confidentiality; and developing strategies to combat stigma and social exclusion connected with the epidemic.

Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS, 2011 (United Nations, 2011)

The United Nations High Level Meeting on HIV/AIDS was held on 8–10 June 2011 in New York to review the progress achieved in meeting the commitments of the 2001 Declaration of Commitment on HIV/AIDS and the 2006 Political Declaration on HIV/AIDS. The Political Declaration on HIV and AIDS saw the 193 Member States of the United Nations commit to redouble efforts to achieve universal access for HIV prevention, treatment, care and support by 2015 with a view to fulfilling Millennium Development Goal 6.

All commitments are relevant, but specifically:

- Commit to ensure that national prevention strategies comprehensively target populations at higher risk and that systems of data collection and analysis about these populations are strengthened and to take measures to ensure that HIV services, including voluntary and confidential HIV testing and counseling are accessible to these populations so that they are encouraged to access HIV prevention, treatment, care and support;
- Commit to intensify national efforts to create enabling legal, social and policy frameworks in each national context in order to eliminate stigma, discrimination and violence related to HIV and promote access to HIV prevention, treatment, care and support and non-discriminatory access to education, health care, employment and social services, provide legal protections for people affected by HIV, including inheritance rights and respect for privacy and confidentiality, and promote and protect all human rights and fundamental freedoms, with particular attention to all people vulnerable to and affected by HIV;
- Commit to review, as appropriate, laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programmes to people living with and affected by HIV and to consider their review in accordance with relevant national review frameworks and time frames;
- Commit to national HIV and AIDS strategies that promote and protect human rights, including programmes aimed at eliminating stigma and discrimination against people living with and affected by HIV, including their families, including by sensitizing the police and judges, training health-care workers in non-discrimination, confidentiality and informed consent, supporting national human rights learning campaigns, legal literacy and legal services, as well as monitoring the impact of the legal environment on HIV prevention, treatment, care and support.

Getting to Zero, UNAIDS 2011–2015 Strategy (UNAIDS, 2010)

The 2010 UNAIDS Getting to Zero Strategy highlighted global commitments to HIV/AIDS and outlined three strategic directions with corresponding goals.

The three strategic directions are:

- Zero new infections
- Zero AIDS-related deaths
- Zero discrimination

All goals are relevant, but specifically:

- Sexual transmission of HIV reduced by half, including among young people, men who have sex with men and transmission in the context of sex work
- Universal access to antiretroviral therapy for people living with HIV who are eligible for treatment
- Countries with punitive laws and practices around HIV transmission, sex work, drug use or homosexuality that block effective responses reduced by half
- Zero tolerance for gender-based violence

**SPECIFIC GLOBAL
COMMITMENTS
AND GUIDANCE
ON HUMAN
RIGHTS AND HIV
IN RELATION
TO SEXUAL
MINORITIES**

Yogyakarta Principles – Principles on the application of international human rights law in relation to sexual orientation and gender identity
(Collective, 2007)

In November 2006 a group of human rights experts met in Yogyakarta, Indonesia and developed a set of principles on the application of human rights laws in relation to sexual orientation and gender identity. The Yogyakarta Principles affirm binding international legal standards that all states are obligated to comply with. The Principles define sexual orientation and gender identity as the following:

- Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.
- Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

All Principles are relevant, but specifically:**Principle 1**

The right to the universal enjoyment of human rights:

All human beings are born free and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights.

States shall:

- a. Embody the principles of the universality, interrelatedness, interdependence and indivisibility of all human rights in their national constitutions or other appropriate legislation and ensure the practical realization of the universal enjoyment of all human rights;

- b. Amend any legislation, including criminal law, to ensure its consistency with the universal enjoyment of all human rights;
- c. Undertake programmes of education and awareness to promote and enhance the full enjoyment of all human rights by all persons, irrespective of sexual orientation or gender identity;
- d. Integrate within State policy and decision-making a pluralistic approach that recognises and affirms the interrelatedness and indivisibility of all aspects of human identity including sexual orientation and gender identity.

Principle 2

The rights to equality and non-discrimination:

Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination. Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.

States shall:

- a. Embody the principles of equality and non-discrimination on the basis of sexual orientation and gender identity in their national constitutions or other appropriate legislation, if not yet incorporated therein, including by means of amendment and interpretation, and ensure the effective realization of these principles;
- b. Repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity;
- c. Adopt appropriate legislative and other measures to prohibit and eliminate discrimination in the public and private spheres on the basis of sexual orientation and gender identity;
- d. Take appropriate measures to secure adequate advancement of persons of diverse sexual orientations and gender identities as may be necessary to ensure such groups or individuals equal enjoyment or exercise of human rights. Such measures shall not be deemed to be discriminatory;
- e. In all their responses to discrimination on the basis of sexual orientation or gender identity, take account of the manner in which such discrimination may intersect with other forms of discrimination;
- f. Take all appropriate action, including programmes of education and training, with a view to achieving the elimination of prejudicial or discriminatory attitudes or behaviours which are related to the idea of the inferiority or the superiority of any sexual orientation or gender identity or gender expression.

Principle 3

The right to recognition before the law:

Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.

States shall:

- a. Ensure that all persons are accorded legal capacity in civil matters, without discrimination on the basis of sexual orientation or gender identity, and the opportunity to exercise that capacity, including equal rights to conclude contracts, and to administer, own, acquire (including through inheritance), manage, enjoy and dispose of property;
- b. Take all necessary legislative, administrative and other measures to fully respect and legally recognise each person's self-defined gender identity;
- c. Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person's profound self-defined gender identity;
- d. Ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned;
- e. Ensure that changes to identity documents will be recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy;
- f. Undertake targeted programmes to provide social support for all persons experiencing gender transitioning or reassignment.

Principle 17

The right to the highest attainable standard of health:

Everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation or gender identity. Sexual and reproductive health is a fundamental aspect of this right.

States shall:

- a. Take all necessary legislative, administrative and other measures to ensure enjoyment of the right to the highest attainable standard of health, without discrimination on the basis of sexual orientation or gender identity;
- b. Take all necessary legislative, administrative and other measures to ensure that all persons have access to healthcare facilities, goods and services, including in relation to sexual and reproductive health, and to their own medical records, without discrimination on the basis of sexual orientation or gender identity;

- c. Ensure that healthcare facilities, goods and services are designed to improve the health status of, and respond to the needs of, all persons without discrimination on the basis of, and taking into account, sexual orientation and gender identity, and that medical records in this respect are treated with confidentiality;
- d. Develop and implement programmes to address discrimination, prejudice and other social factors which undermine the health of persons because of their sexual orientation or gender identity;
- e. Ensure that all persons are informed and empowered to make their own decisions regarding medical treatment and care, on the basis of genuinely informed consent, without discrimination on the basis of sexual orientation or gender identity;
- f. Ensure that all sexual and reproductive health, education, prevention, care and treatment programmes and services respect the diversity of sexual orientations and gender identities, and are equally available to all without discrimination;
- g. Facilitate access by those seeking body modifications related to gender reassignment to competent, non-discriminatory treatment, care and support;
- h. Ensure that all health service providers treat clients and their partners without discrimination on the basis of sexual orientation or gender identity, including with regard to recognition as next of kin;
- i. Adopt the policies, and programmes of education and training, necessary to enable persons working in the healthcare sector to deliver the highest attainable standard of healthcare to all persons, with full respect for each person's sexual orientation and gender identity.

Principle 19

The right to freedom of opinion and expression:

Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.

States shall:

- a. Take all necessary legislative, administrative and other measures to ensure full enjoyment of freedom of opinion and expression, while respecting the rights and freedoms of others, without discrimination on the basis of sexual orientation or gender identity, including the receipt and imparting of information and ideas concerning sexual orientation and gender identity, as well as related advocacy for legal rights, publication of materials, broadcasting, organisation of or participation in conferences, and dissemination of and access to safer-sex information;
- b. Ensure that the outputs and the organisation of media that is State-regulated is pluralistic and non-discriminatory in respect of issues of sexual orientation and gender identity and that the personnel recruitment and promotion policies of such organisations are non-discriminatory on the basis of sexual orientation or gender identity;
- c. Take all necessary legislative, administrative and other measures to ensure the full enjoyment of the right to express identity or personhood, including through speech, deportment, dress, bodily characteristics, choice of name or any other means;

- d. Ensure that notions of public order, public morality, public health and public security are not employed to restrict, in a discriminatory manner, any exercise of freedom of opinion and expression that affirms diverse sexual orientations or gender identities;
- e. Ensure that the exercise of freedom of opinion and expression does not violate the rights and freedoms of persons of diverse sexual orientations and gender identities;
- f. Ensure that all persons, regardless of sexual orientation or gender identity, enjoy equal access to information and ideas, as well as to participation in public debate.

Global Commission on HIV and the Law – Risks, Rights and Health, 2012 (UNDP, 2012)

In June 2011, a group of experts in the field of HIV and the law undertook an 18-month review of global HIV-related legal environments. The Commission reported findings and made recommendations to aid governments and international bodies in the creation of enabling legal environments.

In order to ensure an effective, sustainable response to HIV that is consistent with human rights obligations, countries must repeal all laws that criminalize consensual same-sex sexual activity and promote effective measures to prevent violence against MSM. Rather than punishing consenting adults involved in same-sex activity, countries must offer access to effective HIV and health services.

All recommendations made by the commission are relevant, but specifically:

To ensure an effective, sustainable response to HIV that is consistent with human rights obligations:

- Countries must prohibit police violence against key populations.
- Countries must also support programmes that reduce stigma and discrimination against key populations and protect their rights.
- Countries must reform their approach towards sexual diversity. Rather than punishing consenting adults involved in same sex activity, countries must offer such people access to effective HIV and health services and commodities.

Countries must:

- Repeal all laws that criminalize consensual sex between adults of the same sex and/or laws that punish homosexual identity.
- Respect existing civil and religious laws and guarantees relating to privacy.
- Remove legal, regulatory and administrative barriers to the formation of community organizations by or for gay men, lesbians and/or bisexual people.
- Amend anti-discrimination laws expressly to prohibit discrimination based on sexual orientation (as well as gender identity).
- Promote effective measures to prevent violence against men who have sex with men.
- Countries must reform their approach towards transgender people. Rather than punishing transgender people, countries must offer transgender people access to effective HIV and

health services and commodities as well as repealing all laws that criminalize transgender identity or associated behaviours.

Countries must:

- Respect existing civil and religious laws and guarantees related to the right to privacy.
- Repeal all laws that punish cross-dressing.
- Remove legal, regulatory or administrative barriers to formation of community organizations by or for transgender people.
- Amend national anti-discrimination laws to explicitly prohibit discrimination based on gender identity (as well as sexual orientation).
- Ensure transgender people are able to have their affirmed gender recognized in identification documents, without the need for prior medical procedures such as sterilization, sex reassignment surgery or hormonal therapy.

Human Rights Considerations in Addressing HIV Among Men who Have Sex with Men (Avrett, 2011)

This technical brief provides guidance on rights-based approaches to HIV programming for MSM. It identifies three strategies that are necessary for rights-based programming and provides practical examples of ways in which such programmes have improved health and human rights environments for MSM.

Strategy 1:

- Engage with those who would benefit

Purpose:

- To advance their collective needs and priorities for health and rights.
- Support effective measures to prevent HIV and improve health in the community.

Recommended programme approaches:

- Encourage peer-to-peer support, dialogue, and leadership among MSM.
- Encourage and support the involvement of MSM in health and rights programming.

Strategy 2:

- Remove barriers that limit access to HIV programming

Purpose:

- To increase the number of MSM who access HIV services, thus increasing the proportion of MSM who receive HIV counseling, testing, and treatment in the context of combination HIV interventions, and ultimately reducing rates of HIV infections and improving the overall health of MSM.

Recommended programme approaches:

- Document policies and practices that present barriers to the HIV response.
- Promote literacy about human rights and supportive policies and practices.
- Support reporting of and response to rights violations.
- Facilitate dialogue between MSM and policymakers.

Strategy 3:

- Integrate rights approaches within health programming and support universal rights to health

Purpose:

- To increase access to and use of appropriate, non-discriminatory, and easily available HIV services, with the ultimate aim of reducing the incidence of STIs, HIV, and AIDS-related illness.

Recommended programme approaches:

- Promote professional and institutional standards in health care settings
- Support peer-based health services in both community and clinical settings.
- Fund health programming for MSM at sufficient scale.

Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (UN Assembly: Human Rights Council, 2011)

The report sets out the areas within which people are discriminated against because of sexual orientation and gender identity and the laws and commitments that guide the removal of these forms of discrimination.

The report specifically addresses:

- The absolute right to be free from torture, inhuman or degrading treatment on the grounds of sexual orientation or gender identity
- The right to privacy and against arbitrary detention
- The right to life, liberty and security
- The need to record and address all forms of homophobic and transgender-phobic violence

Gender recognition and related issues:

71. In many countries, transgender persons are unable to obtain legal recognition of their preferred gender, including a change in recorded sex and first name on State-issued identity documents. As a result, they encounter many practical difficulties, including when applying for employment, housing, bank credit or State benefits, or when travelling abroad.
72. Regulations in countries that recognize changes in gender often require, implicitly or explicitly, that applicants undergo sterilization surgery as a condition of recognition. Some

States also require that those seeking legal recognition of a change in gender be unmarried, implying mandatory divorce in cases where the individual is married.

73. The Human Rights Committee has expressed concern regarding lack of arrangements for granting legal recognition of transgender people's identities. It has urged States to recognize the right of transgender persons to change their gender by permitting the issuance of new birth certificates and has noted with approval legislation facilitating legal recognition of a change of gender.

The Global Fund Strategy in Relation to Working with Sexual Orientation and Gender Identities (The Global Fund, 2009)

In 2009 the Global Fund board approved the Strategy in Relation to Sexual Orientation and Gender Identity (SOGI). This strategy identified that MSM, transgender people and sex workers often have a difficult time accessing Global Fund grant money and have limited access to Global Fund decision-making bodies, exacerbating the barriers to access to funding. The Strategy recommends 19 actions that the Global Fund Secretariat, its governance structures and its partners can take to better meet the needs of SOGI.

All recommended actions are relevant, but specifically:

- **Action 7**

The Global Fund will work with the Technical Review Panel to strengthen technical review criteria with additional language about both gender equality and SOGI-related health and rights.

- **Action 9**

The Global Fund will work with Principal Recipients and Country Coordinating Mechanisms to encourage increased country-level and regional-level budget allocations for development of monitoring and evaluation adapted to interventions on vulnerabilities related to gender inequality and SOGI in the fight against HIV, TB and malaria.

- **Action 14**

The Global Fund will support Principal Recipients in improving plans and budgets for community systems strengthening relevant to gender and SOGI in in-country contexts, including budgeting and contracting for technical assistance for this community systems strengthening.

- **Action 15**

The Global Fund will work with in-country partners, in ways appropriate to those settings, to raise and discuss the role of criminalization of consensual adult homosexual behaviours as a potential barrier to effective health interventions for people due to SOGI.

- **Action 19**

The Global Fund will commit to meeting with government and civil society representatives before it holds Board meetings in any country where sex between consenting adults of the same gender is criminalized. The Global Fund will use the occasion of a Board Meeting to bring exposure and urgency to this issue through high-level meetings and public relations events, conducted within the scope and mandate of the work of the Global Fund. As with the politically sensitive issue of HIV-related travel restrictions, the Global Fund Board commits to

dialogue with policy-makers so that decisions can be made with maximum understanding of the implications of such laws and policies.

UNAIDS Action Framework: Universal Access for Men who have Sex with Men and Transgender People (UNAIDS, 2009)

The UNAIDS Action Framework was developed with a view of achieving universal access to HIV prevention, treatment, care and support for MSM and transgender people in order to achieve universal access for all. The Framework highlights that actions must be grounded in an understanding of and commitment to human rights and that actions must be informed by evidence. Action is required by a broad range of stakeholders including affected communities, allies, governments, private sector and the UN family. The Framework proposes three immediate objectives and corresponding actions to scale up the response to HIV.

The objectives and key actions proposed:

- **Objective 1**

Improve the human rights situation for men who have sex with men and transgender people—the cornerstone to an effective response to HIV

For an enhanced response for male-to-male sex, transgender people and HIV, UNAIDS and its Cosponsors will:

- Develop, strengthen and promote rights-based norms and standards for the integration of men who have sex with men and transgender people into national AIDS responses and provide specific policies and guidance for rights-based and evidence-informed programmes and services;
- Support and strengthen partnerships to address the political, social, legal and economic barriers to appropriately addressing HIV-related issues among men who have sex with men and transgender people.

- **Objective 2**

Strengthen and promote the evidence base on men who have sex with men, transgender people and HIV

For an enhanced response for male-to-male sex, transgender people and HIV, the UNAIDS Secretariat and Cosponsors will:

- Ensure that country partners and other partners have adequate information to develop and support the implementation of appropriate policies and programmes addressing male-to-male sex, transgender people and HIV by supporting improved epidemiological and behavioral surveillance, programme monitoring and evaluation, and related operational research on men who have sex with men and transgender people in relation to HIV (population size, epidemiological, behavioural, social, human rights and other aspects, where relevant, and paying attention to different men who have sex with men and transgender identities, behaviours and situations, such as male sex workers, injecting drug users and prison populations), including appropriate HIV sentinel surveillance, while providing guidance and technical support for the collection of this information;

- Develop, document and share evidence of successful HIV programme models that address men who have sex with men and transgender people, along with lessons learnt, to facilitate improved, more targeted and scaled-up programming.
- **Objective 3**

Strengthen capacity and promote partnerships to ensure broader and better responses for men who have sex with men, transgender people and people with HIV

For an enhanced response for male-to-male sex, transgender people and HIV, the UNAIDS Secretariat and Cosponsors will:

- Identify and advocate additional financial resources to address HIV among men who have sex with men and transgender people, help direct these resources to where they are most needed, and support governments and civil society in receiving and applying funds for HIV-related work that addresses male-to-male sex and transgender people;
- Ensure that UNAIDS-supported regional knowledge hubs and technical support facilities are able to deliver timely support and strategic information on male-to-male sex, transgender people and HIV.

Technical Guidance on Combination HIV Prevention for MSM, 2011 (PEPFAR, 2011)

The United States Global Leadership Against HIV/AIDS, TB and Malaria Reauthorization Act of 2008 recognized the need for PEPFAR to provide assistance for HIV/AIDS education programmes and training to prevent the transmission of HIV among MSM. PEPFAR's Technical Guidance on Combination HIV Prevention for MSM identifies a set of core prevention interventions that should be delivered by partner countries to adequately address the needs of MSM. Country Teams are expected to build the capacity of partner countries in order to implement these interventions in a non-discriminatory manner. The Technical Guidance document highlights that access to services must be equitable, voluntary and non-discriminatory and that PEPFAR programmes should involve MSM and support existing MSM networks. The guidance identifies core elements of a comprehensive package of HIV-prevention services and encourages PEPFAR programmes to adopt best practices for MSM.

Elements of a comprehensive package of HIV-prevention services:

- Community-based outreach;
- Distribution of condoms and lubricants;
- HIV counseling;
- Active linkages to Health Care services and ART;
- Targeted information, education and communication (IEC); and
- STI prevention, screening and treatment.

PEPFAR identified best practices for HIV prevention among MSM:

- Involve MSM;
- Ensure confidentiality;

- Provide staff training;
- Collect and use strategic information;
- Link, integrate and co-locate services; and
- Incorporate research advances and new technologies.

Advancing the Sexual and Reproductive Health and Human Rights of Men who have Sex with Men Living with HIV (GNP+/MSMGF, 2010)

Developed by the Global Network of People living with HIV and the Global Forum on MSM and HIV this policy briefing reviews rights-based principles and examines issues related to sexual and reproductive health of MSM. The document makes a set of recommendations for advancing the sexual and reproductive health and human rights of MSM living with HIV.

For Sexual Health Advocates and HIV Care Workers

- Access to affordable legal assistance should be made available to MSM (youth and adult) who experience sexual coercion or violence
- Specific and targeted information on sexual and reproductive health designed to appeal to MSM living with HIV should be made available, including social marketing efforts that reflect the subjective experiences of MSM.
- Availability of safe virtual or physical social spaces for MSM living with HIV should be expanded and promoted.

For Community and Civil Society Organizations

- Empowerment of MSM living with HIV should be integral to all sexual and reproductive health programmes and policies – including the establishment of self-help groups and networks of MSM living with HIV.
- Campaigns to decrease stigma, discrimination, and the acceptability of homophobia should be supported and promoted.
- Initiatives that encourage the greater involvement of MSM living with HIV must be supported.

Trans and intersex people: Discrimination on the grounds of sex, gender identity and gender expression, 2011 (Agius, 2011)

This report describes the challenges faced by transgender people and what discrimination on the grounds of gender identity and gender expression looks like. The report looks at the importance of international human rights law and the application of such laws to the rights of transgender people. The report defines *trans* as those people who have a gender identity and/or a gender expression that is different from the sex they were assigned at birth. Transsexual people and transgender people and intersex people are defined as the following:

- Transsexual people identify with the gender role opposite to the sex assigned to them at birth and seek to live permanently in the preferred gender role. This is often accompanied by strong rejection of their physical primary and secondary sex characteristics and a wish to align their body with their preferred gender. Transsexual people might intend to undergo, be undergoing or have undergone gender reassignment treatment.

- Transgender people live permanently in their preferred gender. Unlike transsexuals, however, they may not necessarily wish to or need to undergo any medical interventions.
- Intersex people differ from trans people as their status is not gender-related but instead relates to their biological makeup (genetic, hormonal and physical features) which is neither exclusively male nor exclusively female, but is typical of both at once or not clearly defined as either. These features can manifest themselves in secondary sexual characteristics such as muscle mass, hair distribution, breasts and stature; primary sexual characteristics such as reproductive organs and genitalia; and/or in chromosomal structures and hormones. The term intersex has replaced the term 'hermaphrodite', which was used extensively by medical practitioners during the eighteenth and nineteenth centuries.

Additional resources:

1. Reducing HIV Stigma and Discrimination: a critical part of national AIDS programmes. A resource for national stakeholders in the HIV response (UNAIDS, 2007)
2. Social Discrimination against Men Who Have Sex with Men – Implications for HIV Policy and Programs (Ayala, Beck, Lauer, Reynolds & Sundararaj, 2010)
3. Ensuring human and sexual rights for men who have sex with men living with HIV (Moody, 2009)
4. HIV Prevention with MSM: Balancing Evidence with Rights-based Principles of Practice (Ayala, Hebert, Lauer & Sundararaj, 2010)
5. Reaching Men who have Sex with Men (MSM) in the Global HIV & AIDS Epidemic: A Policy Brief (Ayala, Lauer, Sundararaj & Hebert, 2010)

**STRATEGIC
INFORMATION**

The Global HIV Epidemics among Men Who Have Sex with Men (Beyrer, Wirtz, Walker, Johns, Sifakis & Baral, 2011)

This 2011 WHO report addresses the importance for low and middle-income countries to expand HIV services for MSM in order to improve responses to HIV/AIDS. For selected countries the report provides epidemiological data and information on coverage of HIV services for MSM. It also provides guidance on a minimum package of evidence and rights-based services for prevention, treatment and care of MSM as well as ways to improve environments in order to reach acceptable coverage of these services.

All policy recommendations are relevant, but specifically:

- Criminalization of same-sex behavior has profound implications across the spectrum of policies, issues, and programmes for MSM.
- Community participation in every step of programme development and implementation for MSM is crucial: the community is *the* key partner for this population.
- Laws and policies that promote universal access and gender equality in principle may fail for MSM in practice where homophobic cultural, religious, or political forces are active: good policies for HIV do not guarantee good outcomes for MSM and other sexual minorities.
- Epidemiologic and cost-effectiveness findings are consistent with the rights argument, not counter to it – responding to MSM with high rates of coverage has positive effects for overall HIV trajectories in all four scenarios studied.

HIV in men who have sex with men (The Lancet, 2012)

This special edition of the Lancet, released in conjunction with the International AID Conference in Washington in 2012, presented current information on the epidemics of HIV among MSM.

All papers relevant, but particularly:

- MSM, AIDS Research activism and HAART
- Global Epidemiology
- Comprehensive clinical care for MSM
- Community leadership
- A call for comprehensive service design
- Stigma and discrimination

Particular quote of interest:

“The high transmission efficiency of HIV in MSM suggests that prevention approaches that can reduce the probability of per-act transmission will probably be needed to produce substantial reductions in new infections. These interventions include anti-retroviral-based approaches.” (p. 76)

Additional resources:

1. A Framework for Monitoring and Evaluating HIV Prevention Programmes for Most-At-Risk Populations (UNAIDS, 2007)
2. Legal Aspects of HIV/AIDS, A Guide for Policy and Law Reform (Gable, Gamharter, Gostin, Hodge Jr & Van Puymbroeck, 2007)
3. Practical Guidelines for Intensifying HIV Prevention: Towards Universal Access (UNAIDS, 2007)
4. MSM Country Snapshots (UNDP/UNAIDS/APCOM/HIV/AIDS Data Hub, et al., 2012)

CLINICAL GUIDANCE FOR ADDRESSING HIV AND AIDS AMONG MSM AND TRANSGENDER PEOPLE

Prevention and treatment of HIV and other sexually transmitted infections among men who have sex with men and transgender people – Recommendations for a public health approach, 2011 (WHO, 2011)

The WHO document on prevention and treatment of HIV and STIs among MSM and transgender people was developed to guide national public health officials and managers of HIV/AIDS and STI programmes, NGOs, CBOs and civil society organizations as well as health workers. The guidelines provide recommendations for regional and country partners on appropriate interventions to address the needs of MSM and transgender people. The overarching principle of this document in respect for and protection of human rights.

All recommendations are relevant, but specifically:

- Legislators and other government authorities should establish anti-discrimination and protective laws, derived from international human rights standards, in order to eliminate

discrimination and violence faced by MSM and transgender people, and reduce their vulnerability to infection with HIV, and the impacts of HIV and AIDS.

- Health services should be made inclusive of MSM and transgender people, based on the principles of medical ethics and the right to health.
- Offering HIV testing and counseling to MSM and transgender people is strongly recommended over not offering this intervention
- Implementing individual-level behavioral interventions for the prevention of HIV and STIs among MSM and transgender people is suggested over not implementing such interventions.
- MSM and transgender people living with HIV should have the same access to ART as other populations. ART should be initiated at CD4 counts of ≤ 350 cells/mm³ (and for those in WHO clinical stage 3 or 4 if CD4 testing is not available). Access should also include management of opportunistic infections, co-morbidities and treatment failure.

Additional resources:

1. Training for Health Care Workers: Reducing Stigma and Discrimination Related to HIV and AIDS (EngenderHealth, 2004)
2. "The Time Has Come": Enhancing HIV, STI and other Sexual Health Services for MSM and Transgender People in Asia and the Pacific - Training Package for Health Providers and Reduction of Stigma in Healthcare Settings (UNDP/WHO, 2013)

ADVOCACY AND INTERVENTION TOOLS

Toolkit: Scaling Up HIV-Related Legal Services, 2009 (IDLO/UNAIDS, 2009)

The Toolkit was developed for lawyers, legal service managers, government staff, and people planning to establish or expand HIV-related legal services. It is intended to provide guidance on how to improve the quality and impact of HIV-related legal services as well as provide different models and approaches for delivery of such services. The Toolkit identifies guiding principles for HIV-related legal services and provides guidance on how to design local services.

The Toolkit explores a range of HIV-related legal service models:

Model 1. Stand-alone HIV-specific legal services

Model 2. HIV legal services integrated into the government's legal aid agency

Model 3. HIV legal services integrated into the HIV organization or the harm reduction organization

Model 4. HIV legal services provided through community outreach

Model 5. HIV legal services integrated into an organization with a broader human rights focus

Model 6. HIV legal services provided by private sector lawyers on a pro bono basis

Model 7. HIV legal services provided by private lawyers on retainer to community-based organizations

Model 8. HIV legal services provided by a university law school

The Power to Change: Building Advocacy Capacity for India's HIV/AIDS Response (Cabassi, 2007)

This manual was developed under the Avahan Project by Constella Futures. It contains a set of practical skills-building exercises.

The key areas of skills development covered are:

Module A: Introduction to advocacy

Module B: Introduction to evidence-based advocacy

Module C: Understanding the policy process

Module D: Advocating for change

Module E: Implementation

Module F: Advocacy messages and methods

Module G: Evidence for action: using data for advocacy

Sexual Rights and the Universal Periodic Review: A Toolkit for Advocates (The International Planned Parenthood Federation and The Sexual Rights Initiative, 2012)

The United Nations Universal Periodic Review (UPR) process is used to review each UN Member State every four and a half years on the status of human rights in each country. The review process commenced its first cycle in 2008 reviewing 48 countries per year and 192 countries in each cycle. The Toolkit developed by the IPPF and the SRI is intended to assist Civil Society Organizations to participate in the UPR. It provides practical information on how the UPR functions and ways advocates can bring issues of human rights violations to the attention of the UPR.

Additional resources:

1. An Introduction to Promoting Sexual Health for Men who Have Sex with Men and Gay Men: A Training Manual (NAZ Foundation India, 2001)
2. Understanding and Challenging Stigma toward Men who have Sex with Men: Toolkit for Action (Sakara et al., 2010)
3. Regional Legal Reference Resource: Protective Laws related to HIV, Men who have Sex with Men and Transgender People in South Asia (UNDP/IDLO/SAARCLAW, 2013)
4. A Framework for Media Engagement on Human Rights, MSM and Transgender Persons in South Asia (UNDP/CFAR, 2013)

2. REGIONAL

REGIONAL COMMITMENTS ON HIV, HUMAN RIGHTS AND SEXUAL ORIENTATION AND GENDER IDENTITY

UN ESCAP Resolution 66/10: Regional call for action to achieve universal access to HIV prevention, treatment, care and support in Asia and the Pacific, 2010 (UN Economic and Social Commission for Asia and the Pacific 66th Session, 19 May 2010)

The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) was established in 1947 as a regional arm of the UN. There are 58 member countries in the region including Afghanistan, Bangladesh, Bhutan, India, Nepal, Pakistan and Sri Lanka. ESCAP focuses on issues in the region that are most effectively addressed through regional cooperation. In 2010 ESCAP Resolution 66/10 was adopted by all Member States. The Resolution emphasized the political commitment to meeting the MDGs and the 2001 Declaration of Commitment on HIV/AIDS and called upon members and associate members to accelerate the implementation of the Political Declaration on HIV/AIDS. By adopting the Resolution, Member States agree to meet the commitments and recommendations set forward within it.

All recommendations are relevant, but specifically:

Calls upon all members and associate members:

- To ground universal access in human rights and undertake measures to address stigma and discrimination, as well as policy and legal barriers to effective HIV responses, in particular with regard to key affected populations;

Requests the Executive Secretary:

- To support members and associate members in their efforts to enact, strengthen and enforce, as appropriate, legislation, regulations and other measures to eliminate all forms of discrimination against people living with HIV and AIDS and other key affected populations, and to develop, implement and monitor strategies to combat stigma and exclusion connected with the epidemic

UN ESCAP Resolution 67/9: Asia-Pacific regional review of the progress achieved in realizing the Declaration of Commitment on HIV/AIDS and the Political Declaration on HIV/AIDS (UN Economic and Social Commission for Asia and the Pacific 67th Session, 19–25 May 2011)

Following the 2011 comprehensive review of the progress achieved in realizing the Declaration of Commitment on HIV/AIDS, ESCAP met in Bangkok on 19–25 May 2011 to discuss the region's commitment to addressing the HIV epidemic. By adopting the Resolution, Member States agree to meet the commitments and recommendations set forward.

All recommendations are relevant, but specifically:

Calls upon members and associate members to further intensify the full range of actions to reach the unmet goals and targets of the Declaration of Commitment on HIV/AIDS and the Political Declaration on HIV/AIDS by:

- Developing national strategic plans and establish strategic and operational partnerships at the national and community levels to scale up high-impact HIV prevention, treatment, care

and support to achieve 80 per cent coverage for key affected populations with a view of achieving the universal access target;

- Initiating, as appropriate, in line with national priorities, a review of national laws, policies and practices to enable the full achievement of universal access targets with a view to eliminate all forms of discrimination against people at risk of infection or living with HIV, in particular key affected populations;
- Increasing the effectiveness of national responses by prioritizing high-impact interventions for key affected populations.

Asia-Pacific High-Level Intergovernmental Meeting on the Assessment of Progress Against Commitments in the Political Declaration on HIV/AIDS and the Millennium Development Goals, 6–8 February 2012: Accelerating regional implementation of the internationally agreed commitments to achieve universal access to HIV prevention, treatment, care and support in Asia and the Pacific (UN Economic and Social Commission for Asia and the Pacific, 2012)

In February 2012 the Asia-Pacific High-Level Intergovernmental Meeting on the Assessment of Progress against Commitments in the Political Declaration on HIV/AIDS and the Millennium Development Goals was held in Bangkok. The Report and Regional Framework for Action that came out of this meeting were endorsed by ESCAP member states. Members that attended the meeting included Bangladesh, India, Nepal, Pakistan and Sri Lanka. The Framework called for greater regional cooperation to accelerate progress towards meeting the commitments in the 2011 Political Declaration on HIV and AIDS and the MDGs.

The Meeting noted that there has been an increase in HIV prevalence among MSM in the region, and recognized efforts made to promote greater access to HIV services for MSM by countries such as India, Indonesia, Thailand and Viet Nam. The Meeting acknowledged that transgender people face heightened stigma and discrimination, including a lack of formal recognition of their gender identification. In order to meet global commitments, countries must work to reduce HIV among MSM and transgender populations.

Punitive legal and policy environments that hinder interventions targeting key affected populations are a major constraint in Government's ability to develop effective HIV responses. This includes laws that criminalize same-sex relations and sex work, as well as laws that impose HIV-related restrictions on entry, stay and residence. Laws criminalizing same-sex sexual activity coupled with stigma and discrimination limit access to HIV services for MSM and create conditions that encourage the spread of the epidemic. Interventions aimed at delivering services to MSM cannot succeed if the intended beneficiaries are fugitives of the law.

The Regional Framework for Action:

- 2012 – National multi-sectoral consultations on policy/legal barriers (almost complete for MSM/transgender people)
- 2013 – participatory and inclusive national reviews on implementing the Political Declaration, ESCAP resolutions 66/10 and 67/9
- Early 2014 – Regional overview of progress in meeting the commitments in the Political Declaration, ESCAP resolutions 66/10 and 67/9
- Late 2014 – inclusive regional intergovernmental review meeting of national efforts and progress

- May 2015 – Seventy-first session of ESCAP
- September 2015 – UN General Assembly Review of MDGs

SAARC Regional Strategy on HIV and AIDS (2006–2010) (SAARC and UNAIDS, 2006)

The South Asian Association for Regional Cooperation (SAARC) region comprises of seven countries (Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka). The vision of the SAARC Regional Strategy on HIV and AIDS is:

- to halt or reverse the spread and impact of HIV and AIDS;
- to commit leaders to lead the fight against HIV and AIDS; and,
- to provide PLWHIV with access to affordable treatment and care, and enjoy a dignified life.

Principles and challenges that are specifically related to MSM include:

Guiding Principles:

- Involve people living with HIV in all types of leadership and include young, women and members of vulnerable populations.
- Generate/provide technical support for Member States for policy and programmes for targeted and effective BCC strategies in prevention and health promotion (treatment, care and support) – “The right prevention services for right people at the right time”.
- Strong voice, policy and legislation support against gender inequality, stigma, discrimination, marginalization and criminalization of vulnerable populations.

Challenges:

- Scaling up intervention for vulnerable populations (SW, IDUs, MSM, young and migrant, refugee and displaced populations).

Redefining AIDS in Asia (Report of the Commission on AIDS in Asia, 2008)

Commissioned by UNAIDS and presented to Mr. Ban Ki-moon on 26 March 2008, *Redefining AIDS in Asia* cemented Asia’s commitment to focusing on MSM and key population focused HIV programmes. The Commission undertook research into Asia’s pandemic and produced recommendations for effective action. The report found that HIV knowledge among surveyed groups of MSM was poor and calls for an urgent scale-up of interventions focused on MSM to prevent the transmission of HIV and to ensure greater access to HIV services.

All findings and recommendations are relevant, but specifically:

- The vast majority of HIV infections in Asia occur during three high-risk behaviours (unprotected commercial sex, the sharing of contaminated injecting equipment, and unprotected sex between men) and one ostensibly ‘low-risk’ behavior (sex between wives and their HIV-infected husbands).
- Leaders should ensure that an ‘enabling environment’ for prevention, care and impact mitigation is established. Legislatures and institutions must address legal or institutional restrictions that undermine effective programmes. Non-governmental and community

organizations, working with Government entities, need to develop strategies to convince the public to support appropriate efforts. Some of those interventions form an intrinsic part of the HIV response and should be funded accordingly.

- HIV-related stigma and discrimination continue to undermine Asia's response to the epidemic—whether by sanctioning inaction or encouraging the harassment and maltreatment of people affected by the epidemic. Leaders must show greater resolve in challenging the ignorance and prejudice that surround the epidemic, and in supporting legislative and other changes that can reduce stigma and discrimination.
- Engagement of affected communities in planning, implementing and assessing HIV responses is weak. Because of the marginalization of people most at risk and the stigma experienced by people living with HIV, AIDS policies and programmes need to be informed by engagements with the affected communities. At present in Asia, the involvement of such key populations in national HIV responses is weak and, in many places, tokenistic.
- Address legal barriers to effective prevention in most at-risk populations. Sex work, the use of narcotics, and sex between men is illegal in many countries. In Asia, where these behaviours are at the center of the HIV epidemics, such legal provisions should not be allowed to hinder potentially effective efforts to control HIV. Countries should repeal punitive laws that criminalize sex between men.
- Governments are advised to shift their focus from punitive legislation towards policies providing protection for vulnerable people who are at high risk of HIV infection, as well as for service providers and their beneficiaries. Rather than try to address HIV risk and transmission among groups most at risk as a legal issue, health-enhancing services should be made available or improved—such as sexual health services for sex workers and their clients, and men who have sex with men and harm reduction programmes for injecting drug users.
- Governments have a duty to ensure that a comprehensive package and continuation of effective treatment services (that is, first- and second-line antiretroviral drugs) is accessible to those who need it.
- Governments must assume responsibility for ensuring that free antiretroviral therapy is available and accessible to all who need it. Community organizations, including those representing most-at-risk groups and people living with HIV, should be involved in designing, implementing and monitoring this undertaking.

HIV AND HUMAN RIGHTS AMONG MSM AND TRANSGENDER PEOPLE

South Asia Roundtable Dialogue 'Legal and Policy Barriers to the HIV Response' (IDLO, 2011)

The Roundtable Dialogue, held in Kathmandu from 8–10 November 2011, was a joint venture of SAARCLAW, IDLO, UNDP and UNAIDS. The Roundtable created a forum for the examination and evaluation of legal and policy barriers to the HIV response in South Asia. The Roundtable identified key legal and policy issues as barriers to the HIV response as well as specific recommendations linked to these issues.

Key legal and policy issues identified:

- The criminalization of behaviors of key populations at higher risk of HIV exposure;
- law enforcement policy and practices;

- lack of sensitivity, knowledge and awareness by law and justice sector leaders and stakeholders;
- the gap between black letter law and practice; and,
- the clear need for greater coordination and collaboration within the law and justice sector.

Summary of recommendations:

- Decriminalize conduct linked to key populations at higher risk through appropriate legislative processes or judicial interventions. Work simultaneously on short term initiatives to address and mitigate the impact of relevant criminal laws;
- sensitize and disseminate information on the rights and issues of people living with HIV (PLHIV) and key populations at higher risk to law and justice sector stakeholders and healthcare providers;
- recognize the need for space for key populations at higher risk to collaborate (strength in synergies);
- empower PLHIV and key populations at higher risk with knowledge about their rights under the law and the mechanisms that they may utilize to access and defend these rights;
- empower human rights institutions with the necessary and appropriate statutory powers to enable them to address and respond to diverse legal and ethical issues and implications pertaining to human rights;
- advocate for constitutional challenges and public interest litigation, recognizing the role of judicial leadership;
- sensitize the media about the objectives of a legal enabling environment, and the rights of key populations at higher risk and PLHIV;
- advocate for healthcare providers and law and justice sector authorities to commit to a public health approach; and,
- strengthen the legal enabling environment.

Punitive Laws, Human Rights and HIV prevention among men who have sex with men in Asia Pacific – High-level dialogue report (UNDP, 2010)

This report summarizes the presentations made by panellists at this high-level dialogue.

Panellists:

Hon. Michael Kirby, former judge of the High Court of Australia, member of the UNAIDS Reference panel on Human Rights

Hon. Ajit Prakash Shah, Chief Justice, Delhi High Court, India

Hon. Dame Carol Kidu, Minister for Community Development, Papua New Guinea

Shivananda Khan, OBE, Chairperson, APCOM

Dr. Mandeep Dhaliwal, Team Leader, Human Rights, Gender and Sexual Diversity, HIV Group, Bureau of Development Policy, UNDP, New York

John Godwin, Legal Consultant, Asia and the Pacific

Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific – An agenda for action (Godwin, 2010)

In 2010 APCOM and UNDP commissioned an investigation into the legal environments affecting HIV responses of 48 countries in Asia and the Pacific. The study specifically focused on the effects of laws, policies, and practices and the role of CSOs in improving legal environments for MSM and transgender people. The study found that legal environments that marginalize MSM and transgender people contribute to low levels of access to HIV services. The report identified the following as characteristics of a repressive legal environment:

- laws criminalizing male-to-male sex between consenting adults;
- law enforcement practices targeting MSM and transgender people for harassment, assault, extortion and detention, relating to allegations of breach of public order, sex work, trafficking or other offences;
- censorship laws restricting publication of images or messages relating to homosexuality;
- laws that restrict community-based organizations (CBOs) from obtaining legal status;
- absence of legal protections from discrimination on the grounds of sexual orientation or gender identity;
- absence of legal recognition of transgender status, for purposes including identification, passports and travel rights, voting, entitlements to welfare, and the right to marry;
- absence of legal recognition of same-sex relationships. This can result in denial of a range of benefits available to heterosexual partners including participation as next-of-kin in medical decisions, denial of welfare and housing entitlements, and denial of inheritance rights.

All recommendations made by the report are relevant, but specifically:

Governments should:

- Repeal laws that criminalize sex between consenting adults.
- Enact anti-discrimination laws in relation to sexual orientation and transgender status.
- Ensure parliamentarians, police, judges and justice ministry officials have access to evidence-based information and are trained on the epidemiology of HIV and the harmful public health and human rights impacts of punitive laws and law enforcement practices relating to MSM and transgender people.
- Support community-based education and advocacy regarding the human rights of MSM and transgender people, and access to legal aid for MSM and transgender people who have experienced human rights violations.

Laws affecting LGBT persons in South Asia – a desk review (Bondyopadhyay, 2011)

This review provides a summary of laws affecting LGBT people in the region.

Country analyses from:

- Bangladesh
- India
- Nepal
- Pakistan
- Sri Lanka

Recommends:

- a. Conduct a study that undertakes to explore in details the violation of the rights of LGBT persons, and discrimination, stigma and violence faced by them.
- b. Develop a toolkit to train and sensitize lawyers to LGBT concerns and organize workshops on such trainings.
- c. Explore strategies to utilize the experience of India and Nepal to bring about legal challenge to LGBT oppressive laws in those jurisdictions where it is possible to do so.
- d. Formulate and implement advocacy strategies to address the family of LGBT persons.
- e. Develop a toolkit for training trainers to address the issue of marriage pressure faced by LGBT, and organize workshops for such trainings.
- f. Develop strategies to address religious leaders on issues of LGBT.

MSM, HIV/AIDS and Human Rights in South Asia (Khan, 2003)

This report written by the Executive Director of Naz Foundation International, Shivananda Khan, discusses human rights concerns of MSM in South Asia. The report investigates the social dynamics that cause MSM to be marginalized in South Asia, highlighting issues of power inequalities and poverty. There are various terms used to describe MSM and transgender people in South Asia. This report clarifies the use of various terms, defining *hijras*, *panthis/giryas/tas* and *zenanas/kothis/metis* as the following:

- *Hijras*: A self-identified term used by males who define themselves as “not men/not women” but as a “third gender.” *Hijras* cross-dress publicly and privately and are a part of a strong social, religious, and cultural community. Ritual castration may be part of the *hijra* identity, but not all *hijras* are castrated. Sex with men is common. They also have their own language, known as *ulti*.
- *Panthis/Giryas/Tas*: A *panthi/giriya* is by definition a man who penetrates, whether it is a woman and/or another male. *Panthis/giryas* may also be married to women and/or access other females. Their occupations vary across the social class spectrum from rickshaw drivers to businessmen (Resource Guide Note: the term ‘*Ta*’ is used in Nepal).

- *Zenana/Kothi/Metis*: A self-identifying label for those males who feminize their behaviours (either to attract “manly” male sexual partners and/or as part of their own gender construction and usually in specific situations and contexts), and who state that they prefer to be sexually penetrated anally and/or orally. *Zenana/kothi/meti* behaviours have a highly performative quality in social spaces. Self-identified *zenanas/kothis/metis* use this term for males who are sexually penetrated, even when their behavior is not feminized. This is the primary and most visible framework of MSM behaviours. *Zenanas/kothis/metis* state that they do not have sex with others like themselves, only “real men”; however, they may also be married to women. Note that the term *kothi* tends to be used in India and Bangladesh, *zenana* in Pakistan and *meti* in Nepal.

From the “front line” – A report of a study into the impact of social, legal and judicial impediments to sexual health promotion, care and support for males who have sex with males in Bangladesh and India (Khan & Bondyopadhyay, 2005)

This is a report on a study of obstacles to prevention, care and support for MSM in India and Bangladesh.

Why work with MSM:

- Because it is the right thing to do:
- On humanitarian grounds;
- Epidemiologically, and;
- From a public health perspective
- Males who have sex with males, whether their self-identity is linked to their same-sex behavior or not, have the right to be:
 - a. Free from violence and harassment;
 - b. Treated with dignity and respect;
 - c. Treated as full citizens in their country;
 - d. Free from HIV and AIDS
- And MSM who already are infected with HIV have the right to access appropriate care and treatment equally with everyone, regardless of how the virus was transmitted to them.

**STRATEGIC
INFORMATION**

HIV/AIDS among men who have sex with men and transgender populations in South-East Asia – the current situation and national responses (WHO SEARO, 2010)

In 2010 WHO SEARO undertook an investigation of national responses to HIV/AIDS among MSM and transgender populations in the following countries: Bangladesh, India, Indonesia, Maldives, Myanmar, Nepal, Sri Lanka, Thailand and Timor-Leste. The review found that the scale of national responses did not match the increasing HIV prevalence among MSM and transgender people in South East Asia.

Recommendations made by the report include the following:

- Governments should be encouraged to repeal laws (if they have not done so already) that impede HIV prevention activities, including laws that criminalize consensual same-sex sexual relations among adults. Ongoing advocacy and policy efforts are integral for effective HIV prevention, treatment and care for MSM and transgender populations.
- Rapidly scale up implementation of various essential and innovative HIV prevention, treatment and care interventions, ensure that human and funding resources are sufficient to meet the needs of MSM and transgender populations, and progress towards Millennium Development Goal 6 (MDG 6) to halt by 2015 and begin to reverse the spread of HIV/AIDS.
- Encourage and provide incentives to existing NGOs to work with MSM and transgender populations in countries where CBOs are non-existent or nascent. Build the capacity of NGOs to implement interventions among MSM and transgender populations.
- Expand the number of surveillance sites in national surveys beyond largely urban areas to improve estimates of national HIV prevalence, contribute towards achieving adequate coverage, and provide evidence-based responses to meet the needs of MSM and transgender populations.
- Support the implementation of social, policy and epidemiological research among MSM and transgender populations.

Men who have sex with men – the missing piece in the national responses to AIDS in Asia and the Pacific (UNAIDS, 2007)

In 2007, UNAIDS identified MSM-specific services as a key component missing from most national HIV programmes. The report highlighted that MSM are a significant component of the HIV epidemic in the Asia-Pacific region and that stigma and discrimination drive the epidemic. The report found that condom use among MSM was low and that many MSM also have sex with women, indicating a clear risk for female sexual partners of MSM. The report also highlighted the importance of evidence-based national responses, emphasizing the need for countries in Asia to address MSM in these responses.

Treatment Access for Positive MSM in the Asia Pacific (APN+, 2010)

The Asia Pacific Network of People Living with HIV and AIDS (APN+) commissioned a research project in six Asian countries to assess the range and quality of HIV services available for MSM and transgender people living with HIV and structural barriers to treatment access. The countries in which research was undertaken are India, Indonesia, Malaysia, Myanmar, Nepal, and Singapore. Structural barriers identified through this research include availability of treatment, accessibility and economic costs of services.

All research findings are relevant, but specifically:

- Stigma and discrimination, particularly amongst healthcare providers, is a major disincentive to seek treatment.
- Unethical disclosure of sexuality and/or HIV status by healthcare staff perpetuates distrust in local healthcare infrastructure.
- Strong cultural norms pertaining to sexuality impede availability of accurate treatment information, create the fear of disclosure and an increased chance of social isolation and loss of social support.

HIV in Asia – Transforming the agenda for 2012 and beyond (Godwin & Dickinson, 2012)

This report builds on findings from the Report of the Commission on AIDS in Asia in 2008, providing strategic advice on policy, programming and partnership investments for HIV in the region. In order to develop evidence-based strategic options, an assessment of investments and impacts in the region was conducted. The report addresses issues related to funding and service architecture, and provides strategic options aimed at bilateral and multilateral organizations.

MAP Report 2005 – Male-Male Sex and HIV/AIDS in Asia (Pisani & Brown, 2004)

This report summarizes key epidemiological findings of HIV and AIDS among MSM in Asia and discusses implications of those findings. The report highlights the need for HIV prevention programmes in Asia to target MSM and discusses strategies for reducing HIV transmission among this population.

Additional resources:

1. Report on mapping of MSM groups, organizations and networks in South Asia (APCOM, 2008)
2. Mapping Transgender Groups, Organizations and Networks in South Asia (APCOM, 2008)
3. It all starts here: Estimating the size of populations of men who have sex with men and transgender people (APCOM, 2010)
4. HIV and Men who have Sex with Men in Asia and the Pacific (UNAIDS, 2006)

GUIDANCE ON DESIGNING HIV PROGRAMMES AND SERVICES FOR MSM AND TRANSGENDER PEOPLE

Towards Universal Access: Examples of Municipal HIV Programming for Men who have Sex with Men and Transgender People in Six Asian Cities (UNDP, 2011)

Methodology and Implementation Manual for Six Cities Scanning Initiative for Scale-Up of HIV Responses to MSM and TG Persons (Berry, 2010)

In 2010 UNDP commissioned a scan of programme activities addressing HIV and human rights among MSM and transgender people in six cities across Asia and the Pacific. The six cities were Bangkok, Thailand; Chengdu, China; Ho Chi Minh City, Vietnam; Yangon, Myanmar; Manila, Philippines; and Jakarta, Indonesia. The goal of the scan was to stimulate discussion, cooperation and action for scale-up of HIV services for MSM and transgender people, and to gather information on organizational relationships to assist local leaders in identifying next steps for scale-up of responses. The aim of this study, beyond its use in the six cities, was to identify activities conducted by successful HIV programmes working with MSM and transgender people to aid in future programme design. This process is to be repeated in a selection of South Asian cities for a future report.

Health sector response to HIV/AIDS among MSM, 2009, Western Pacific Region (WHO, 2009)

In February 2009 the World Health Organization Regional Office for the Western Pacific held a consultation in Hong Kong to discuss ways of scaling up the health sector response to HIV and AIDS among MSM and transgender people. The consultation identified action areas necessary for strengthening the response through the strategic collection and use of information, advocacy for a supportive environment, and promotion of a single comprehensive package of services for MSM and transgender people. The report recognized that laws and policies can hinder a supportive environment and made the following recommendations for a supportive legal and regulatory environment.

This collaboration identified a comprehensive package of service and programmes that would support HIV prevention and care among MSM and transgender people:

- free condom and lubricant distribution
- outreach projects
- targeted media campaigns, including use of the internet
- HIV and sexual health services including:
 - HIV counseling, testing and treatment
 - STI screening & treatment
 - screening and treatment for genital & anorectal problems
 - Hep B testing & vaccination
 - Hep C testing
 - Hormonal management & monitoring for transgender people
- services for HIV-positive MSM and transgender people
- HIV treatment
- HIV prevention services, including:
 - family planning for female partners
 - care, counseling & testing for sero-discordant couples
 - psychosexual counseling
 - psychosocial counseling, including substance use issues

The report identifies the following essential supportive activities to implement the comprehensive package of services:

- capacity building for health-care workers, CBOs
- mobilization by CBOs of their target community
- advocacy

- strategic planning
- attention to the enabling environment to remove access barriers

Developing a Comprehensive Package of Services to Reduce HIV among Men who have Sex with Men (MSM) and Transgender (TG) Populations in Asia and the Pacific – Regional Consensus Meeting (Bangkok) (UNDP, 2009)

This report summarizes the presentations and group-work at a regional consensus meeting held to develop a comprehensive package of programmes and services for MSM and transgender people in Asia.

Agreed elements of the Comprehensive Package were:

- HIV Prevention
 - Peer outreach, peer education and drop-in services
 - Promotion of and access to the means of prevention
 - STI prevention and treatment
 - HIV counseling and testing
- Access to HIV Treatment, Care and Support
- An Enabling Environment for prevention and care services
- Strategic Information

Priority HIV and sexual health interventions in the health sector for MSM and TG people in the Asia-Pacific Region, 2010 (WHO, 2010)

This report describes health sector interventions needed to achieve universal access to HIV and STI prevention, treatment, care and support for MSM and transgender people. During a Regional Consensus Meeting held in Bangkok in 2009, a Consensus Statement on the Comprehensive package of HIV interventions and sexual health services for MSM and transgender people in Asia and the Pacific was agreed upon (UNDP, 29 June – 1 July 2009). The report highlights the responsibility of the health sector, in collaboration with other sectors and the community to develop and support accessible, acceptable and equitable comprehensive programmes and service delivery models that address the needs of MSM. WHO, UNDP, UNAIDS, UNESCO and APCOM are all of the view that the meaningful involvement of MSM and transgender people is central to an effective, rights-based HIV response.

All recommendations set out in this report are relevant, but specifically:

- HIV prevention interventions in the health sector should include:
 - interventions aimed at changing behavior;
 - those aimed at addressing cultural norms, social attitudes and behaviours that may increase people's vulnerability to STI and HIV infection; and

- biomedical interventions such as promotion of condoms, lubricants, and clean needles and syringes.
- The health sector, as part of a multisectoral response, should provide guidance on sex education, school-based HIV education, mass media communications and educational messaging, and other behavior change interventions designed to increase the demand for and use of condoms and lubricant by MSM. Health facilities in contact with MSM should actively promote effective and consistent condom and lubricant use.
- HIV prevention programmes should accord high priority to transgender people in all settings through specially targeted programmes. In addition to the full range of prevention interventions, these programmes need to place special emphasis on developing advocacy skills related to the special needs of transgender people, self and community empowerment, psychosocial support and counseling, and capacity building.
- MSM services should generally be provided in mainstream STI clinics rather than in stand-alone MSM clinics, which may increase stigma and discourage attendance. Conversely, it may be deemed preferable to have MSM-specific facilities in some local contexts, at least as referral or centers of excellence.
- Healthcare practitioners at all levels of service provision should be sensitized to the needs of MSM and transgender clients.
- Priority must be given to engaging and maintaining MSM in HIV care with services that offer an environment in which stigma and discrimination are minimized. MSM should be given supportive access to the full range of services in which staff are sensitized to their issues and needs.

Ensuring universal access to comprehensive HIV services for MSM in Asia and the Pacific, 2009 (amfAR, 2009)

An assessment to identify priorities for operations research was undertaken in 2009 to better understand effective models for HIV prevention, treatment, care, and support among MSM in Asia and the Pacific. Prevention-to-care approaches include health promotion, behavior change communication, emotional and social support, and clinical care.

A conceptual model for an HIV prevention-to-care continuum for MSM includes the following:

- Improving knowledge through community education, outreach services and promoting the effective use of condoms and other prevention tools;
- Promoting behavior change through community mobilization, health education workshops, seminars, support groups, cultural change;
- Providing STI diagnosis and treatment through accessible clinical services that help to reduce population-level rates of STIs, individual susceptibility to HIV infection and general health;
- Enabling people to know their HIV status through effective VCT services that provide pathways to ongoing prevention support for all;
- HIV treatment, care and support that provides for the social and emotional needs of people with HIV; and,
- Access to other social, legal and welfare services that affect other drivers of the epidemic: poverty, unemployment, poor mental health, marginalization and lack of education.

Additional resources:

1. Developing a successful GFATM regional proposal to strengthen community responses to HIV among MSM and TG in South Asia (Settle, Khan, Mulji & Boner, 2010)

**CLINICAL
GUIDANCE****International Union against Sexually Transmitted Infections (IUSTI Asia Pacific Branch) Clinical Guidelines for Sexual Health Care of MSM** (Bourne, 2005)

The Clinical Guidelines for Sexual Health Care of MSM acknowledge that clinical environments can be threatening to MSM and transgender people and that these populations often withhold information that may be critical to care or avoid medical care all together due to fear of discrimination. This document outlines various clinical guidelines for working with MSM and transgender people.

Health care services guidelines for MSM and transgender people:

- Employment of qualified MSM & transgender staff at the clinic where possible;
- A workplace free from discrimination and harassment for MSM & transgender staff;
- Policies for non-discriminatory service delivery;
- Complaints procedure for anti-discrimination policies;
- MSM & transgender sensitive clinic reception procedures and staff;
- Culturally competent MSM & transgender issues services;
- Confidentiality as a cornerstone of sexual health care;
- Privacy;
- MSM & transgender youth and children issues; and
- MSM & transgender community input to board of directors.

3. NATIONAL

BANGLADESH

LEGAL AND POLICY ENVIRONMENT AND CURRENT SITUATION

State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults (Ottosson, 2010)

The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) have summarised laws prohibiting same sex activity in 76 countries. Many Commonwealth countries have inherited oppressive laws from the British Empire. Same-sex sexual activity remains illegal in Bangladesh. Section 377 “Unnatural Offences” of the Penal Code, 1860 states:

“Whoever voluntarily has carnal intercourse against the order of nature with man, woman, or animal, shall be punished with imprisonment of either description which may extend to life, or up to 10 years, and shall also be liable to fine.

Explanation: Penetration is sufficient to constitute the offense as described in this section.”

Additional resources:

1. The Bangladesh Penal Code 1860. http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=11
2. Human Rights Watch (Human Rights Watch, 2009)

Legal Reference Brief: Bangladesh – Protective Laws related to HIV, men who have sex with men and transgender people (Mahabul Alam & Gregg, 2012)

The Legal Reference Brief is an output of the South Asian Roundtable on Legal and Policy Barriers to HIV held in Kathmandu 8–10 November 2011. The purpose of this Reference Brief is to document key protective laws in Bangladesh focused on HIV, MSM and transgender people.

Key findings reported in this Brief:

- Bangladesh became a member of the United Nations (UN) in 1974, and has since signed and ratified or acceded to/adopted a number of conventions, including:
 - a. International Covenant on Civil and Political Rights (ICC PR) – 6 September 2000;
 - b. International Convention on Economic, Social and Cultural Rights (ICESCR) – 5 October 1998;
 - c. Universal Declaration of Human Rights (UDHR).
- Research failed to identify laws or regulations which specifically protect the basic rights of PLHIV and people with diverse SOGI in Bangladesh.

UN Universal Periodic Review – Round 1, 2009 (Human Rights Council 11th Session, Agenda Item 6, 2009)

In 2009 the UN UPR assessed Bangladesh’s human rights in all areas. Following the review, the Czech Republic and Chile both made recommendations to Bangladesh in regards to issues

of human rights among MSM and transgender people. The following recommendation is summarized in the Report of the Working Group:

27. Provide human rights training to law enforcement and judicial officers, with a specific focus on the protection of the rights of women, children and persons of minority sexual orientation or gender identity and adopt further measures to ensure protection of these persons against violence and abuse (Czech Republic); Consider abolishing article 377 of the Penal Code, which criminalizes sexuality against the “order of nature” (Chile); Decriminalize same sex activity between consenting adults and adopt further measures to promote tolerance in this regard (Czech Republic).

However, the official response was to refuse to accept the recommendation. “[T]he specific recommendation on sexual orientation can not be accepted. Bangladesh is a society with strong traditional and cultural values. Same-sex activity is not an acceptable norm to any community in the country. Indeed, sexual orientation is not an issue in Bangladesh. There has been no concern expressed by any quarter in the country on this. Therefore, the recommendation is out of context.” (UPR Info, 2012)

HIV and men who have sex with men: Country Snapshots – Bangladesh (UNDP, 2012)

This document was developed by the partnering organisations, UN country offices and national partners and supported by UNDP under the South Asia Multi-country Global Fund Round 9 Programme. The MSM Snapshot highlights the current situation in Bangladesh in regards to HIV and MSM.

The following key points are highlighted in this document:

- There have been few identified cases of HIV among MSM in Bangladesh
- Bangladesh is one of the recipient countries of the approved Global Fund Round 9 South Asia Regional MSM Proposal
- The Global Fund Rolling Continuation Channel (RCC) grant has enabled the provision of HIV prevention services to 33,000 MSM and hijra through 65 drop-in centres in 40 districts of Bangladesh since 2010.

NATIONAL RESPONSE

Constitution of Bangladesh (Constitution of the People’s Republic of Bangladesh, 1972)

Preamble

We, the people of Bangladesh, having proclaimed our Independence on the 26th day of March, 1971 and through a historic war for national independence, established the independent, sovereign People’s Republic of Bangladesh;

Pledging that the high ideals of absolute trust and faith in the Almighty Allah, nationalism, democracy and socialism meaning economic and social justice, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in the war for national independence, shall be fundamental principles of the Constitution;

Further pledging that it shall be a fundamental aim of the State to realise through the democratic process to socialist society, free from exploitation – a society in which the rule of law, fundamental

human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens;

Affirming that it is our sacred duty to safeguard, protect and defend this Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh so that we may prosper in freedom and may make our full contribution towards international peace and co-operation in keeping with the progressive aspirations of mankind;

In our Constituent Assembly, this eighteenth day of Kartick, 1379 B.S corresponding to the fourth day of November, 1972 A.D., do hereby adopt, enact and give to ourselves this Constitution.

The following articles are of specific relevance:

Article 11: Democracy and human rights.

The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured.

Article 15: Provision of basic necessities.

It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens

- a. the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;
- b. the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;
- c. the right to reasonable rest, recreation and leisure; and the right to social security, that is to say to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases.

Article 27: Equality before law.

All citizens are equal before law and are entitled to equal protection of law

Article 28: Discrimination on grounds of religion, etc.

1. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.
2. Women shall have equal rights with men in all spheres of the State and of public life.
3. No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.
4. Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.

3rd National Strategic Plan for HIV and AIDS Response 2011–2015 (NASP, 2011)

Implementation Plan of National Strategic Plan 2011–2015 (NASP, 2011)

The National Strategy highlights the importance of working with Most at Risk Populations (MARPs) with a goal of minimizing the spread of HIV and the impact of AIDS on the individual, family, community, and society by 2015. The highest priority for prevention will be working with MARPs but will also involve working with emerging risk groups, especially vulnerable adolescents. The Strategy identifies key challenges to meeting its goal. These challenges include scaling up and improving the quality of HIV services for MARPs and meeting increased treatment, care and support needs over the coming years.

Objectives:

- Implement services to prevent new HIV infections ensuring universal access
- Provide universal access to treatment, care and support services for people infected and affected by HIV
- Strengthen the coordination mechanisms and management capacity at different levels to ensure an effective multi-sector HIV/ AIDS response
- Strengthen the strategic information systems and research for an evidence based response

Guiding principles of this Strategy:

- Prevention outcomes will be enhanced by ensuring services are planned and delivered to achieve coverage targets, and systems are in place to address emerging challenges and improve quality of services
- Stigma and discrimination will be reduced and multi-sector response strengthened through an enabling environment and advocacy
- The impact of gender will be addressed by ensuring age and gender appropriate services are provided and working in partnership with other sectors to advocate for gender equality across public policy

Additional resources:

1. UNGASS Country Progress Report: Bangladesh (UNGASS, 2012)

National guidance on HIV and AIDS:

1. Bangladesh Technical Support Plan for HIV and AIDS 2008–2015 (NASP/UNAIDS Secretariat Bangladesh, 2007)
2. Standard Operating Procedures for Services to People Living with HIV and AIDS (NASP/Save the Children-USA/JPGSPH of Brac University and Population Council, 2009)
3. National guidelines for Antiretroviral Therapy for HIV/AIDS in Bangladesh (NASP, 2011)

Nationally supported HIV and AIDS Programmes (completed):

1. The Bangladesh AIDS Program, 2005–2009. Program Final Report (Family Health International, Bangladesh, 2009)

2. USAID's Implementing AIDS Prevention and Care (IMPACT) Project, 1997–2007. Program Final Report (Family Health International, 2007)

NATIONAL ADVOCACY

Bandhu Social Welfare Society (amfAR, 2010)

Bandhu Social Welfare is a community organization working with MSM and transgender people in Bangladesh in the area of sexual health and human rights. Stigma and discrimination has been a major barrier for Bandhu to successful work in this area: staff reported relentless harassment by police while participating in field-work making even small activities difficult to carry out. In 2006 Bandhu established an internal department dedicated to working to influence policy in the central government as well as at the district level. The organization advocates for policy reform and works closely with police and policy makers to sensitize them to issues of health and human rights of MSM and transgender people. Representatives from Bandhu regularly conduct individual education sessions with members of law enforcement agencies to improve attitudes towards MSM and transgender people.

In addition to education the organisation has provided a list of outreach workers to the police, which has helped to protect them from official harassment.

James P Grant School of Public Health (JPGSPH), BRAC University, Dhaka (Rashid, Standling, Mohiuddin & Ahmed, 2011)

In 2007 a research team at BRAC University began working to use research and informed debate around issues of sexuality and rights as a means to creating a dialogue in the public arena. Creating an enabling environment for discussions on such issues was seen as necessary for the advancement of a rights-based culture. The group was positioned nicely to undertake such a task: as a university it carried credibility and was able to build off local research knowledge to host meetings, workshops, and forums to bring together various stakeholders and create spaces for dialogue. In July 2007 the School of Public Health hosted an international conference on Gender and Sexuality which was held at the BRAC Centre. The conference brought together international speakers and activists as well as a diverse group of national stakeholders. Later in 2007 the school received funding from the International Women's Health Coalition (IWHC) to conduct three targeted workshops. The workshops targeted academics outside of Dhaka, to foster dissemination of research, and journalists, to sensitize them to issues and to influence reporting and the LGBT community. The research team brought together various stakeholders to challenge the prevailing representations of sexuality and was able to create strategic networks and alliances.

Drik Picture Company (Stangl, Carr, Eckhaus, Brady, Nyblade & Claeson, 2010)

In 2008 Drik Picture Company in Bangladesh undertook a media campaign titled 'Mainstreaming the Fringe to Promote Stigma Reduction' which utilized web-based and non-web-based media to raise awareness about HIV and AIDS, stigma, discrimination and issues related to marginalized populations. The campaign engaged journalists to disseminate media messages related to HIV/AIDS and stigma which were developed in accordance with UNAIDS guidelines on appropriate HIV terminology. Drik had a difficult time gaining trust from marginalized populations but found that after working closely with the community-based organization, Bandhu Social Welfare Society, members of marginalized groups began to approach them to share their stories. Due to the religious and legal context of Bangladesh, Drik met strong resistance from marginalized populations to have their interviews broadcast internationally. Drik continues to work with Bandhu to help people living with HIV share their stories.

Additional resources:

1. HIV/AIDS Interventions in Bangladesh: What can Application of a Social Exclusion Framework Tell Us? (Khosla, 2009)

BHUTAN**LEGAL AND
POLICY
ENVIRONMENT
AND CURRENT
SITUATION****State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults (Ottosson, 2010)****Unnatural sex**

Section 213. "A defendant shall be guilty of the offence of unnatural sex, if the defendant engages in sodomy or any other sexual conduct that is against the order of nature."

Grading of unnatural sex

Section 214. "The offence of unnatural sex shall be a petty misdemeanor."

Classes of crime

Section 3. "For the purpose of this Penal Code, the classes of crimes shall be as follows:

- (c) A crime shall be petty misdemeanor, if it is so designated in this Penal Code or other laws and provides for a maximum term of imprisonment of less than one year and a minimum term of one month for the convicted defendant."

Additional resources:

1. The Penal Code: (Royal Government of Bhutan, 2004)
2. South Asia Legal Environments for Men who have Sex with Men and Transgender People (APCOM, 2012)

HIV and men who have sex with men: Country Snapshots – Bhutan (UNDP, 2012)

This document was developed by the partnering organisations, UN country offices and national partners and supported by UNDP under the South Asia Multi-country Global Fund Round 9 Programme. The MSM Snapshot highlights the current situation in Bhutan in regards to HIV and MSM.

The following key points are highlighted in this document:

- Homosexuality is a taboo subject in Bhutan
- There are no known epidemiologic studies focusing on MSM in Bhutan
- There is very little published information about the MSM population in Bhutan

- There are no known community-based responses to HIV among MSM in Bhutan
- There are no known national MSM networks in Bhutan
- There is no information on the extent to which Bhutan's national health system is inclusive of MSM or other sexual minorities

NATIONAL RESPONSE

National Strategic Plan for the Prevention and Control of STIs and HIV and AIDS (Royal Government of Bhutan, 2008)

Bhutan's NSP is guided by the Royal Decree on HIV and AIDS which was issued by His Majesty the Fourth King on the 24 May 2004. The Royal Decree calls for all members of society to help prevent HIV infection and provide care and compassion to those affected. The main objective of the NSP is HIV prevention, specifically focused on vulnerable populations. Interventions will include outreach activities, peer education and communication campaigns. The overarching goal of the NSP is to, by 2015, meet the MDG commitment of achieving and halting the spread of HIV and AIDS. The NSP consists of three strategic goals and a number of strategies to meet the overall goal.

Strategic goals

1. Integrate STI and HIV prevention into the core activities of multi-sectoral partners;
2. Create a supportive environment that facilitates the implementation of programmes and services, and reduces stigma and discrimination towards women and men living with or affected by HIV and AIDS;
3. Improve the quality and coverage of the national response to HIV and AIDS and STIs.

All strategies are relevant, but specifically:

- Promotion of safe sex behaviours;
- Ensuring clear accurate information concerning HIV and AIDS and STIs, and increasing IEC (including on HIV/TB co-infection);
- Enhancing surveillance and access to VCT;
- Prevention interventions among the general population, with additional focus on vulnerable population groups;
- Continuing treatment, care and support of infected and affected population with a special focus on children infected and affected;
- Generating local evidences/information on HIV vulnerabilities in Bhutan;
- Capacity building, integration of STI and HIV and AIDS interventions within health sector, community mobilization and empowerment, leadership and mainstreaming, coordination and networking.

Priority areas for the implementation of the NSP:

- Enhancing the prevention of STI and HIV transmission

- Enhancing access to treatment, care and support for people living with HIV and AIDS
- Creating a supportive environment for women and men living with or affected by HIV and AIDS
- Creating an enabling environment for successful implementation of the national response to HIV and AIDS and STIs
- Generating strategic information for evidence-based action.

INDIA

LEGAL AND POLICY ENVIRONMENT AND CURRENT SITUATION

Delhi High Court Judgement on Homosexuality and IPC 377 (Delhi High Court, 2 July 2009)

In 2009 the Indian NGO, Naz India, challenged the constitutional validity of Section 377 of the Indian Penal Code, 1860 (IPC) which criminally penalized private consensual sex between adults of the same sex. Section 377, titled "Of Offences Affecting the Human Body", categorized under the sub-chapter titled "Of Unnatural Offences" read:

"377. Unnatural Offences – Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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

According to the journal article "Decriminalizing Homosexuality in India" (Misra, 2009), this law has led to serious discrimination against people engaging in homosexual acts. Some of the reported mistreatment included frequent beatings and blackmail attempts by police, who used the threat of prosecution against them.

On 2 July 2009 the Delhi High Court ruled that the provision of Section 377 that criminalizes private consensual sex between same-sex adults violated the country's Constitution and international human rights conventions and decriminalized consensual homosexual sex between adults.

Legal Reference Brief: India – Protective Laws Related to HIV, men who have sex with men and transgender people (Mago, 2012)

This Legal Reference Brief is an output of the South Asian Roundtable on Legal and Policy Barriers to HIV held in Kathmandu 8–10 November 2011. The purpose of this Brief is to document key protective laws in India focused on HIV, MSM and transgender people.

Key findings reported in this Brief:

- India joined the United Nations on 30 October 1945 and is party to several international agreements and conventions, including:
 - a. Universal Declaration of Human Rights (UDHR) 1948:

- b. International Covenant on Civil and Political Rights (ICC PR) 1979;
- c. International Convention on Economic, Social and Cultural Rights (ICESCR) 1979.
- India's Constitution was influenced by the UDHR. It includes most civil and political rights including the right to life, equality and non-discrimination. In the context of HIV, discrimination in private health care or employment remains largely unregulated.
- There is no legislation specifically designed to protect PLHIV and people with diverse SOGI.

HIV and men who have sex with men: Country Snapshots – India: (UNDP, 2012)

This document was developed by the partnering organisations, UN country offices and national partners and supported by UNDP under the South Asia Multi-country Global Fund Round 9 Programme. The MSM Snapshot highlights the current situation in India in regards to HIV and MSM.

The following key points are highlighted in this document:

- India is one of the recipient countries of the approved Global Fund Round 9 Regional MSM Proposal. India's Round 9 Proposal includes MSM programmes.
- A 2008 organization mapping exercise found that 65% of all organizations and networks working with MSM in India are community-based.
- Key community-based organizations include the following:
 - i. Humsafar Trust in Mumbai
 - ii. Naz Foundation India Trust in Delhi
 - iii. Social Welfare Association for Men in Chennai
 - iv. Manas Bangala (a coalition of MSM targeted intervention organizations)
 - v. Sahodharan
 - vi. Lakashya Trust
 - vii. Sangama-Samara
- National health services are not adequately targeted to MSM and other key affected populations.
- India does not recognize a 'third gender'.

According to India's 2010 Country Progress Report prepared for UNGASS, the main drivers of the HIV epidemic are unprotected sex with female sex workers, unprotected anal sex between men and injecting drug users. This report did however highlight that there has been a dramatic increase in condom use among MSM, up from 20% in 2006 to 86% in 2009 (UNGASS, 2010). In India, various sexual behavior studies have shown that many MSM and transgender people are also involved in sexual relationships with women. In general, women in India are at increased risk of HIV not because of risky sexual behavior but because they are partners of men who engage in high-risk behavior (International Labour Organization (ILO), 2007). More than 90% of women living with HIV in India acquired HIV from their husbands or sexual partners (UNGASS, 2010).

Due to the HIV transmission dynamics in India, targeted interventions for MSM and transgender people are strategically critical to controlling the HIV epidemic. Unless effective targeted HIV prevention occurs among MARPs, the epidemic will not be controlled (ILO, 2007).

NATIONAL RESPONSE

The National AIDS Control Programme Phase III (2007–2012) (National AIDS Control Organisation India, 2006)

India's National AIDS Control Programme Phase III highlights the importance of targeted interventions among High Risk Groups (HRGs), MSM, SWs and IDUs. Targeted interventions for HRGs offer a package of services including peer-led, NGO-supported outreach and behavior change communication, promotion of condoms, linkages to STI and health services, advocating for enabling environments, and building community ownership of interventions. Targeted Interventions among HRGs have proved effective in preventing the spread of infection; however, coverage of such interventions has been low. Interventions targeting MSM and IDUs have been especially low due to stigma towards high-risk behaviours and weak systems for civil society partnerships. The NACP III has an overarching goal to reverse the AIDS epidemic in India by 2012. The plan consists of four objectives with corresponding strategies.

Objectives and strategies:

1. Up-scaling prevention:
 - Preventing new infections in high risk groups and general population through:
 - i. Saturation of coverage of high risk groups with targeted interventions (TIs)
 - ii. Scaled up interventions in the general population
2. Strengthening care, support and treatment:
 - Providing greater care, support and treatment to larger number of PLHA.
3. Capacity building
 - Strengthening the infrastructure, systems and human resources for scaling-up prevention, care, support and treatment programmes at the district, state and national level.
4. Strengthening strategic information management
 - Strengthening the nationwide Strategic Information Management System.

NATIONAL ADVOCACY

Avahan: India AIDS Initiative (Bill & Melinda Gates Foundation, 2008, 2009)

The Bill & Melinda Gates Foundation launched the India AIDS Initiative, renamed Avahan, in 2003. It is the largest HIV prevention programme in India and focuses on geographical areas with high prevalence of high-risk groups not covered by other HIV prevention programmes. The programme works within six states, providing HIV prevention services to SWs, MSM and IDUs. MSM are reached through behavior change communication in identified locations of higher-risk activity such as hotspots. The programme provides peer led outreach to sex workers and men

who have sex with men at greater risk, distributes millions of condoms free of charge to MSM and transgender people at increased risk, and established STI clinics which provide diagnosis and treatment services free of charge.

Avahan utilized a variety of media activities such as drama, street theatre, and entertainment shows to provide education on HIV, STI symptoms and treatment, safe sex, and condoms. The programme focused its efforts to improve the quality and quantity of HIV media coverage across the six states in which the programme worked. The programme collaborated with national film celebrities, sports stars and business leaders to reach millions of people through public service announcements. These efforts attempted to address ignorance and misconceptions about HIV that lead to stigmatization of high risk populations.

In 2005 Avahan partnered with the Centre for Advocacy and Research (CFAR) to scale-up media advocacy across its programme's six states. During phase 1 of this partnership (2005–2009) CFAR focused on reaching out to members of the media in order to expose stigma and discrimination relating to HIV among high-risk groups. CFAR tracked and monitored daily media coverage of HIV-related issues among vulnerable communities in 224 newspapers and 22 electronic media channels and provided capacity-building training to sensitize the media to such issues. In 2009 CFAR entered into phase 2 of the programme (2009–2013) shifting its focus towards strengthening the media's role in advocacy (CFAR, 2012).

The Humsafar Trust (The Humsafar Trust, 2006)

The Humsafar Trust has been working to fulfil its mission statement, 'a holistic approach to the rights and health of sexual minorities and promoting rational attitudes to sexuality', since 1994. The Humsafar Trust manage drop-in centres in Mumbai, Kalyan and Goa as well as implement projects that benefit MSM and transgender people in India.

Select Humsafar Trust projects:

1. Yaraana

With support from USAID, FHI and IMPACT, Humsafar carried out the 'Yaraana' project from 2001 to 2006. The project aimed to reduce the risk of HIV and STI transmission and provide continuum-of-care services to MSM and transgender people in Mumbai.

2. Shaan

Funded by the Mumbai District AIDS Control Society (MDACS), this project was implemented in 2002 to reduce risk of STI/HIV among Male Sex Workers (MSW) and their clients and high-risk men on and around truck stops in Mumbai.

3. Josh

In 2005–2008 Humsafar Trust implemented project 'Josh' with a goal of creating a safe space for MSM, and to form support groups and generate awareness about HIV and STIs pertaining to the risk involved in male unprotected same sex activity in Thane district.

Heroes Project (Heroes Project, 2012)

Heroes Project is an India-based NGO that works in partnership with the media to sensitize the public to HIV-related issues with the aim of reducing stigma and discrimination. Heroes Project partnered with the Ministry of Information and Broadcasting and the Ministry of Health and Family Welfare in order to develop a national TV outreach campaign addressing issues of stigma and discrimination among vulnerable populations. Through collaboration with India's leading

media and entertainment company, Star TV Network, the campaign embedded HIV messaging and themes in popular television shows generating millions of media impressions

International Federation of Journalists: IFJ media guide and research report on the media's reporting of HIV/AIDS (Pollard & Walters, 2006)

In 2006 the International Federation of Journalists conducted research into the media's reporting of HIV/AIDS in India and five other countries in Asia and Africa. Research was conducted through media monitoring and surveys of journalists and NGOs working in the field of HIV and AIDS. Approximately 20% of journalists in India reported difficulty getting HIV-related stories published with almost 60% saying they filed one to five HIV news stories a week. During the period of media monitoring, investigators found that media coverage of HIV stories in India was infrequent but was generally of good quality. However, representatives from NGOs and journalists surveyed thought that HIV/AIDS reporting was unbalanced and contributed to negative stereotyping. The research found that the main media platform used in all countries was print media despite high levels of illiteracy among most at risk populations. Few journalists in India responded that they had received training in HIV/AIDS reporting with the majority agreeing that such training would improve coverage.

Lotus Integrated AIDS Awareness Sangam (Lotus Sangam, 2008), (Stangl, Carr, Brady, Eckhaus, Claeson, & Nyblade, 2010).

Lotus Integrated AIDS Awareness Sangam is a community-based organization supporting the needs of MSM in Tamil Nadu, India. Lotus Sangam developed a play that they perform to raise awareness about stigma and discrimination towards MSM. Lotus recognized the importance of engaging local leaders in order to reduce stigma. The project obtained a letter from the Tamil Nadu State AIDS Control Society that it used to seek performance approval in villages from the local panchayat leaders. By engaging panchayat leaders, Lotus has had the positive experience of educating and sensitizing not only the leaders but also community members. Through the play and through interactions with Lotus members, behaviours and attitudes of panchayat leaders have shifted which has caused shifts in attitudes among villagers under their authority.

NEPAL

LEGAL AND POLICY ENVIRONMENT AND CURRENT SITUATION

Global Commission on HIV and the Law: Risks, Rights & Health (UNDP, 2012),
Nepal: Treatment of sexual minorities, including legislation, state protection, and support services (Immigration and Refugee Board of Canada, 2012),
2010 Nepal Country Progress Report (Ministry of Health and Population, National Centre for AIDS and STD Control, 2010)

In 2007 a writ petition submitted by petitioners representing organizations of minority people in terms of sexual orientation and gender identity was discussed by the Supreme Court of Nepal. In the historical case, *Sunil Babu Pant and others v Nepal Government and others* (2007), Sunil Pant along with other petitioners challenged the Court to consider the rights of sexual minorities as "citizens of equal standing in the eyes of the constitutional provisions of Nepal". On 21 December 2007, the Supreme Court of Nepal ruled in favour of the LGBTI community, ordering the government to issue citizenship identification to third genders, amend or scrap

all discriminatory laws against LGBTI in Nepal and introduce same sex marriage law in Nepal. Following the Supreme Court decision, the government of Nepal is considering proposals to introduce comprehensive legal protections from discrimination relating to sexuality and gender identity in the context of the drafting of a new Constitution (Godwin J. , 2010).

The 2010 Nepal Country Progress Report identified positive outcomes that resulted from the Supreme Court decision such as a dramatic reduction in violence against LGBTI from the state party; an increase in MSM/LGBTI openly disclosing their sexual orientation to their families and to the public; and, positive shifts in attitude among the general population, political parties, government, and the media towards LGBTI. The government has begun allocating funds for enabling the planning and implementation of programmes that benefit this LGBTI and local district governments are supporting small-scale MSM/LGBTI programmes (Ministry of Health and Population, National Centre for AIDS and STD Control, 2010)

Legal Reference Brief: Nepal – Protective Laws related to HIV, men who have sex with men and transgender people (Gautam & Sherchan, 2012)

This Legal Reference Brief is an output of the South Asian Roundtable on Legal and Policy Barriers to HIV held in Kathmandu 8–10 November 2011. The purpose of this Brief is to document key protective laws in Nepal focused on HIV, MSM and transgender people.

Key findings reported in this Brief:

- Nepal has signed and ratified or acceded to/adopted a number of international human rights instruments, including the following:
 - a. International Covenant on Civil and Political Rights 1966;
 - b. International Covenant on Economic, Social and Cultural Rights 1966;
 - c. Universal Declaration of Human Rights 1948.
- Nepal currently has various policies on HIV which include rights-based components, however these policies don't have the force of law and thus are not binding or enforceable in Court.
- In 2010 the HIV/AIDS and STD Control Board submitted the draft of HIV and AIDS (Prevention, Control, Treatment, Reintegration and Protection of Rights) Bill, 2067, to the Ministry of Health and Population (MoHP). The Bill is currently being amended by MoHP pursuant to which it will be forwarded to the Ministry of Law and Justice (MoLJ) and finally tabled before Parliament for endorsement and enactment. Key protective provisions of the Bill are the following:
 - a. "no person shall be subjected to any form of discrimination because of his/her being HIV infected or on a suspicion that he/she is HIV infected". "No public or private enterprise shall discriminate against any person because of his/her being HIV infected or on a suspicion that he/she is HIV infected, in access or distribution of any facilities, from appointment, transfer or promotion or while nominating for training or study in any public or private enterprise. Such persons' employment shall not be terminated by public or private enterprises nor shall his/her facilities be diminished or denied." Further, "persons infected or suspected to be infected with HIV shall not be discriminated against in his/her familial and personal life through deprivation of his/her access to or exercise of rights under law".

- b. "a person shall not be required to disclose his HIV status unless otherwise required by the provisions of the Bill of any other law in force". "all the health professionals, people working in the health sector and any doctor, nurse, or other staff or worker in the government or the private sector, who have the responsibility to maintain documents or any records, reports or reports of health-related testing to keep confidential any details related to HIV and AIDS status of any person that comes to his/her knowledge in the course of his/her work".
- c. The Bill prohibits mandatory testing of HIV unless otherwise provided in the Bill.
- d. The Bill requires that every individual who undergoes HIV testing to be given compulsory pre and post-test counseling by the testing agency.

HIV and men who have sex with men: Country Snapshots – Nepal (UNDP, 2012)

This document was developed by the partnering organisations, UN country offices and national partners and supported by UNDP under the South Asia Multi-country Global Fund Round 9 Programme. The MSM Snapshot highlights the current situation in Nepal in regards to HIV and MSM.

The following key points are highlighted in this document:

- MSM and other key affected populations are consistently involved in Nepal's Country Coordinating Mechanism (CCM) and other technical working groups related to HIV/AIDS prevention and treatment.
- The South Asian MSM and AIDS Network (SAMAN), which includes Nepal, was awarded a multi-country grant in Round 9 of GFATM.
- Nepal's political instability continues to be a major barrier to an effective national response. It threatens sustained leadership in the national HIV response and risks a reversal of progress on meeting Millennium Development Goals.
- Sexual relations and marriage to women are common among MSM in Nepal.
- The Blue Diamond Society is the key organization working with MSM in Nepal, with an expansive network of care, support, and human rights centres. As of September 2009, BDS's MSM programme covers 26 districts and 31 cities. Services conducted by the BDS include: peer outreach, condom distribution, training on safe sex and HIV, community sensitization and awareness, and support services for MSM and transgender people living with HIV. BDS runs six MSM-focused "care and treatment" centres in Nepal.

Additional resources:

1. The Landmark Decisions of the Supreme Court, Nepal on Gender Justice (Bhattarai, 2010)
2. Nepal Country Progress Report 2010 (Ministry of Health and Population, National Centre for AIDS and STD Control, 2010)

**NATIONAL
RESPONSE****National HIV/AIDS Strategy (2011–2016):** (Ministry of Health and Population National Center for AIDS and STD Control Nepal, 2011).

The Strategy acknowledges that people who inject drugs, FSWs and MSM are the key populations at higher risk of spreading the epidemic.

Goal:

- To achieve universal access to HIV prevention, treatment, care and support

Objectives:

- Reduce new HIV infections by 50% by 2016, compared to 2010;
- Reduce HIV-related deaths by 25% by 2016 (compared with a 2010 baseline) through universal access on treatment and care services; and
- Reduce new HIV infections in children by 90% by 2016 (compared with a 2010 baseline)

Key focus of this strategy:

1. Addressing complete dimensions of prevention to treatment care and support continuum
2. Effective coverage of quality interventions based on the epidemic situation and geographical prioritization
3. Health system and community system strengthening
4. Integration of HIV services into public health system in a balanced way to meet the specific needs of target populations
5. Strong accountability framework with robust HIV surveillance, programme monitoring and evaluation to reflect the results into NHSP-II and National Plan

Additional resources:

1. National HIV/AIDS Policy (His Majesty's Government of Nepal, 1995)
2. Nepal Universal Access Report: Scaling up towards universal access to HIV/AIDS prevention, treatment, care and support (National Centre for AIDS and STI Control Nepal, 2006)

Implementing AIDS Prevention and Care (IMPACT) Project (Family Health International, 2007)

In 2001 Family Health International (FHI) and USAID, in collaboration with the Government of Nepal, provided HIV/AIDS prevention and care through the Implementing AIDS Prevention and Care (IMPACT) project. The project aimed to expand the prevention-to-care continuum of services and focused on female sex workers (FSWs) and their clients; IDUs; MSM, and male sex workers (MSWs) in urban areas; Nepali migrant workers in high migration communities in Nepal and in Mumbai, India; and people living with and affected by HIV/AIDS. The project supported the first Integrated Biologic and Behavioral Survey (IBBS) among MSM and MSW in 2004 in Kathmandu and developed and implemented integrated behavior change interventions (BCIs), STI screening, and VCT services for MSM. The project expanded the distribution of condoms, supporting the sale in non-traditional outlets that were often open longer hours and located near places where MSM socialized or worked. The project reported having trained more than

1,000 peer educators from most-at-risk groups; operated 182 drop-in-centres for most-at-risk groups; developed 26 VCT sites and provided VCT services to 7,235 people.

NATIONAL ADVOCACY

Blue Diamond Society (BDS) (Blue Diamond Society, 2001)

In 2001 Sunil Pant established Nepal's Blue Diamond Society (BDS) with the focus of addressing HIV prevention for sexual minorities. BDS is based in Kathmandu and works with local communities as well as nationally with the mission to improve sexual health, human rights and the well-being of sexual and gender minorities in Nepal. The NGO undertakes health promotion activities, advocates for policy reform, documents human rights violations and support media campaigns. amfAR highlights the importance of BDS as an advocacy leader, advocating for policy change in the area of MSM and transgender human rights. The group engages with police, government and the media to address issues of stigma and discrimination (amfAR, 2010).

Select achievements:

1. Mobilized communities throughout Nepal and delivered services for their target group, through 31 prevention intervention centres, 5 regional care & support centres and 5 regional human rights posts.
2. Successfully conducted training on Human Rights, HIV prevention, care, support and treatment, empowerment of LGBT, advocacy for legal and policy change, and skill building programmes for marginalized LGBT so that they can make a living.
3. Landmark decision by the Supreme Court of Nepal ordering the Government of Nepal to protect and defend the equal rights of LGBT in Nepal as natural persons and eliminate discriminatory laws.
4. Many political parties have included LGBT community issues within their manifestos that are to be included under the constitution.
5. The government has allocated a budget for an LGBT community center and a site has been purchased by BDS.

Beauty and Brains in Action to Tackle HIV/AIDS Stigma and Discrimination (Stangl, Carr, Brady, Eckhaus, Claeson, & Nyblade, 2010)

The Federation of Sexual and Gender Minorities Nepal developed a project with the goal of empowering MSM and transgender communities through a series of beauty pageants. The project was titled 'Beauty and Brains in Action to Tackle HIV/AIDS Stigma and Discrimination' and consisted of five regional and one national beauty pageant aimed at identifying regional and national community ambassadors. Through pageant performances, contestants spread messages about HIV prevention and stigma, educating members of MSM and transgender communities as well as service providers and the general population. The pageants drew an audience of approximately 1,500 and were covered by print and television media to reach a much greater audience. Ambassadors identified through the pageants participated in over 200 advocacy events across the country during the project period.

SRI LANKA

LEGAL AND POLICY ENVIRONMENT AND CURRENT SITUATION

State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults (Ottosson, 2010)

Same-sex sexual activity remains illegal in Sri Lanka according to the Sri Lanka Penal Code of 1883 (Chapter 19) which states the following:

365 – “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be punished with fine”

365A (introduced by the “Penal Code Amendment) Act, No. 22 of 1995” –

“Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of any act of gross indecency with another person, shall be guilty of an offence and shall be punished with imprisonment of either description for a term which may extend to two years or with a fine, or with both and where the offence is committed by a person over eighteen (18) years of age in respect of any person under sixteen (16) years of age shall be punished with rigorous imprisonment for a term not less than 10 years and not exceeding 20 years and with a fine and shall also be ordered to pay compensation of amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such a person.”

Legal Reference Brief: Sri Lanka – Protective Laws related to HIV, men who have sex with men and transgender people (Jinadasa, 2012)

This Legal Reference Brief is an output of the South Asian Roundtable on Legal and Policy Barriers to HIV held in Kathmandu 8–10 November 2011. The purpose of this Brief is to document key protective laws in Sri Lanka focused on HIV, MSM and transgender people.

Key findings reported in this Brief:

- Sri Lanka is a signatory to the following international conventions and treaties relevant to the human rights of PLHIV, MSM and transgender individuals:
 - a. International Covenant on Civil and Political Rights (ICC PR);
 - b. The International Covenant on Economic, Social and Cultural Rights (ICESCR);
 - c. The Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW);
 - d. The Convention on the Rights of the Child (Children’s Rights Convention).
- Sri Lanka does not have laws that specifically protect the rights of PLHIV and people with diverse SOGI.
- The Government of Sri Lanka has focused on the prevention of transmission of HIV among various groups through national strategies and policies. It has created space to approach people with diverse SOGI despite the fact that homosexuality is criminalized.

HIV and men who have sex with men: Country Snapshots – Sri Lanka (UNDP, 2012)

This document was developed by the partnering organisations, UN country offices and national partners and supported by UNDP under the South Asia Multi-country Global Fund Round 9 Programme. The MSM Snapshot highlights the current situation in Sri Lanka in regards to HIV and MSM.

The following key points are highlighted in this document:

- Sri Lanka is one of the recipient countries of the approved Global Fund Round 9 South Asia Regional MSM Proposal.
- Sri Lanka's laws are unsupportive of MSM and present significant challenges to effective HIV prevention programmes.
- Nearly 30 per cent of all MSM reside in Colombo based on 2010 size estimates.
- Many organizations have demonstrated interest in working with MSM but few have demonstrated the organizational capacity to do so. The capacity of NGOs based in regions outside of Colombo to deliver HIV services is especially limited.
- Services conducted by the MSM community-based organizations include peer-led education, counseling on safer sexual behaviours, condom and lubricant use, reducing numbers of partners, and STI counseling, testing, and referrals.
- A recent assessment found that MSM community groups in Sri Lanka are not consulted adequately in national processes related to HIV.
- A national MSM network was established in 2009 as a result of a consultation organized and conducted by Companions on a Journey and Naz Foundation International.
- In 2010, only one STI drop-in center with specific services for MSM was found in Sri Lanka.

Additional resources:

1. The Penal Code (Government of Sri Lanka, 1883)

NATIONAL RESPONSE

National HIV/AIDS Strategic Plan 2007–2011 (National STD and AIDS Control Programme, 2006)

The National STD/AIDS Control Programme (NSACP) is responsible for the development and implementation of the country's HIV/AIDS National Strategic Plan (NSP). In 2006 an external review of the national response to HIV and AIDS in Sri Lanka highlighted the following as the major gaps to successful programming:

1. insufficient focus on FSW and clients, MSM and partners, and drug users;
2. insufficient involvement of NGOs and private sector to increase coverage;
3. insufficient collection and use of strategic information: M&E and research;

4. inadequate programme management at the center (NSACP) and insufficient decentralization of the response to provincial and local governments.

In response to the review the 2007–2011 NSP has outlined priority areas of work as well as two goals and strategies to achieve these goals.

Key priorities for 2007–2011:

- Prevention as the focus of the response: coverage of comprehensive prevention interventions among those most-at-risk drastically increased: with priority for FSW and clients, MSM and partners, DU;
- Support, care and treatment services for PLHIV and their families, based on a national comprehensive care strategy, action plan and technical guidelines;
- Civil society organizations, including NGOs, CBOs, religious groups and private sector will be engaged to complement the public sector prevention and care services.

Goals:

1. To maintain the low HIV prevalence among most-at-risk-populations (MARPs) and the general population;
2. To increase the quality of life of those already infected

Strategies:

- Increased coverage and quality of prevention interventions;
- Increased coverage and quality of care, support and treatment intervention;
- Improved generation and use of information for planning and policy development;
- Increased involvement of relevant sectors and levels of government in the response;
- More supportive public policy and legal environment for HIV and AIDS control;
- Improved management and coordination of the response

National HIV/AIDS Policy: Sri Lanka (NSACP, 2011)

The National HIV/AIDS Policy outlines commitments by the Government of Sri Lanka in the response to HIV/AIDS. The policy document highlights priority areas and strategies as well as overarching objectives.

All commitments are relevant, but specifically:

- The Government of Sri Lanka promotes voluntary confidential counseling and testing, recognizing that mandatory testing would drive those at high risk of HIV infection beyond reach and prevent their access to public health preventive activities and other health services.
- The Government of Sri Lanka accepts the rights of those living with HIV/AIDS to have access to treatment without stigma and discrimination.

- The Government of Sri Lanka will ensure that the human rights of people living with HIV and AIDS are promoted, protected and respected and measures taken to eliminate discrimination and combat stigma which will provide an enabling environment to seek relevant services.

Technical support to design, implement and monitor HIV prevention programmes among Female Sex Workers, Men who have Sex with Men and Transgenders in Sri Lanka (NSACP/World Bank/UoM/UNFPA/UNAIDS, 2011)

The University of Manitoba (UoM) was commissioned by the World Bank and the Government of Sri Lanka to provide technical support for a mapping exercise and for the development of two HIV pilot projects based on findings from the mapping. The mapping provided population size estimates as well as information on locations where SWs and MSM spent time. Following the mapping exercise, an HIV prevention pilot projects were designed to focus on FSWs and MSM in Colombo. The key components of the interventions were:

1. outreach and communication, including the use of micro-planning tools for service delivery and interpersonal communication for sustainable behavior change;
2. referral for STI and HIV testing services;
3. condom distribution; and
4. advocacy for creating an enabling environment.

The pilot project was able to accomplish many things including successfully bringing different stakeholders together, generating good quality data, showcasing a viable programme model, and building the capacity of local teams. Through the pilot project, valuable lessons were identified for future HIV/AIDS programming in Sri Lanka. During the project, in 2011, a political controversy related to MSM forced the project to cease MSM-related interventions ultimately affecting the project's success.

Select lessons learned:

- Involvement of the community is extremely important: The community was involved in the project right from the stages of mapping and planning, to implementation and monitoring. Involving communities helped the project team to understand the realities on the ground and develop appropriate strategies. This shows the need of involving the community in all the stages of the programme cycle for effective implementation.
- More focus on creating an enabling environment is required: Adverse media coverage and its negative impact on the programme shows the need for increased focus on creating an enabling environment. It also shows that when working on culturally sensitive issues, better understanding of the local situation is required, along with a focus on building broader networks with different stakeholders, including media, political and religious leaders. A hostile environment makes it difficult for community-based organizations to survive and function in the interest of the community. COJ as a CBO disintegrated after the adverse media coverage, and gains from the project were lost as the community dispersed and went into hiding due to fear. Therefore advocacy should start along with programme design itself, and should be an integral part of programme implementation.

Additional resources:

1. Available at the NSACP website: <http://www.aidscontrol.gov.lk/nsACP/>

NATIONAL ADVOCACY

First Sri Lanka National Consultation Meeting on MSM, HIV and Sexual Health (Champions on a Journey, 2009)

On 19–21 November 2009 Champions on a Journey and Naz Foundation International organized and conducted the first national consultation meeting on MSM and HIV in order to bring together representatives from various MSM networks around the country in order to discuss ways forward in developing HIV services. Participants were allocated to Working Groups where they engaged in discussions with the aim of meeting the following objections:

1. To discuss issues, needs and concerns of MSM and transgender people, and develop appropriate strategies to address the sexual health needs of males who have sex with males.
2. To develop models of good practices in providing local culturally appropriate sexual health promotion strategies amongst males who have sex with males and their sexual partners of whatever gender.
3. To develop mechanisms to advocate for the funding and support of locally based sexual health services targeting males who have sex with males.
4. To look at training needs specifically addressing issues concerning the sexual health needs for males who have sex with males and the development of appropriate sexual health services.
5. To develop a national network of MSM and transgender people engaged in HIV prevention, treatment care and support work.

Each Working Group developed a series of recommendations for action.

All recommendations are relevant, but specifically:

- Programmes for HIV prevention, care and support through such a process of MSM and transgender community development should provide a comprehensive service package that includes drop-in centers, outreach, and health services that address STIs, HIV related illnesses, opportunistic infections, rectal damage, TB and other general health issues.
- It is essential that MSM and transgender people themselves be recruited and trained to design, develop, implement and manage such services through a series of leadership development programmes
- A range of Behavior, Change, Communication (BCC) materials that respond to the needs of MSM and transgender people be developed in appropriate languages.
- There is a need to ensure that MSM and transgender community-based organizations also provide appropriate peer-led care and support services for their HIV positive constituents, such as support groups, home-based care and support programmes, and sexual health counseling.
- A National MSM and HIV Task Force or Working Group should be developed which will meet regularly to develop and implement collaborative strategies and shared responsibilities.
- Address stigma, discrimination and violence by promoting social justice and wellbeing of MSM and transgender people through training and sensitization programmes for a range of stakeholders, as well as reading down Section 365 and 365A of the Sri Lanka Penal Code, along with Vagrancy laws through strengthened local and national advocacy with government, educational establishments, medical schools, law enforcement agencies, the judiciary, and others.

- Law enforcement personnel need to be sensitized, trained and engaged in supporting HIV prevention amongst MSM and transgender by reducing the level of stigma, discrimination and harassment by them.
- MSM and transgender people need to be recognized both institutionally and legally as active participatory citizens of their country.
- Due to the significant level of stigma and discrimination of MSM and transgender population, it may be necessary to provide in-house STI treatment services within MSM and transgender community-based HIV service providers working in partnership with government services in order to ensure adequate take-up of these services. Such clinics should be available across the country.

Lanka+ (Stangl, Carr, Brady, Eckhaus, Claeson & Nyblade, 2010)

The community-based organization Lanka+ implemented the project 'Reducing Stigma and Discrimination faced by People Living with and Affected by HIV/AIDS through Advocacy for Employment'. The project provided training for skills development in income-generating activities and issued over 20 loans to beneficiaries to establish small enterprises. Follow-up reporting found that project participants had increased self-confidence and continued to apply skills learned through the training towards business ventures.

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