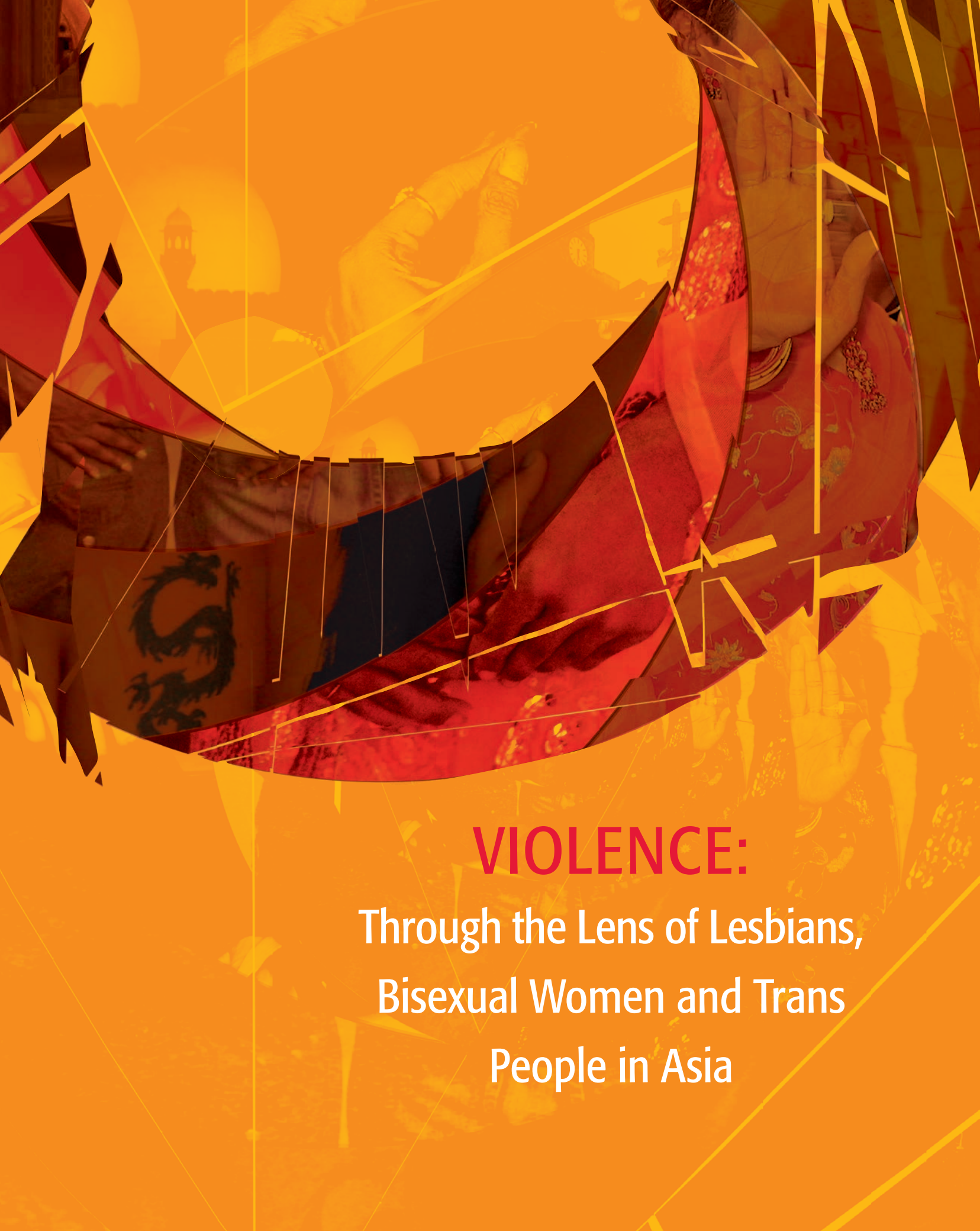
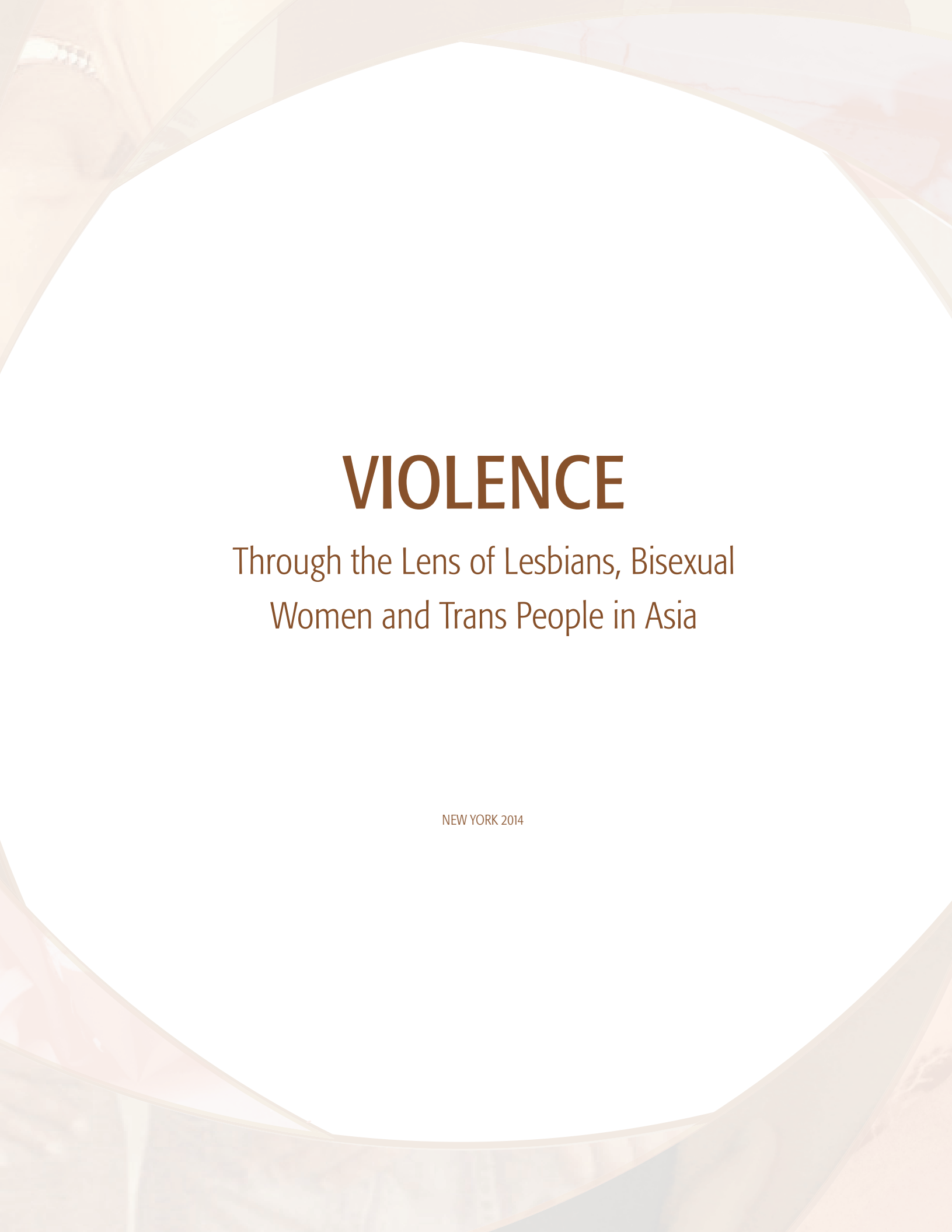




VIOLENCE:

Through the Lens of Lesbians,
Bisexual Women and Trans
People in Asia



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Through the Lens of Lesbians, Bisexual
Women and Trans People in Asia

NEW YORK 2014

THE INTERNATIONAL GAY AND LESBIAN HUMAN RIGHTS COMMISSION

The International Gay and Lesbian Human Rights Commission (IGLHRC), founded in 1990, is a leading international human rights organization dedicated to improving the lives of people who experience discrimination or abuse on the basis of their sexual orientation, gender identity or gender expression. It is dedicated to strengthening the capacity of LGBT human rights movements worldwide to effectively conduct documentation of LGBT human rights violations and engage in human rights advocacy with partners around the globe.



80, Maiden Lane, Suite 1505 • New York, NY 10038 USA

T: +1-212- 430-6054 • E: iglhrc@iglhrc.org

www.iglhrc.org • facebook.com/IGLHRC • [@iglhrc](https://twitter.com/iglhrc)

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ACKNOWLEDGEMENTS

The research, writing, editing, and publication of this report were very much the result of a team effort.

Overarching coordination of the project was provided by Grace Poore, IGLHRC Regional Program Coordinator for Asia and Pacific Islands, while Ging Cristobal, IGLHRC Project Coordinator for Asia and Pacific Islands, provided additional research coordination support.

Each country chapter was researched and written by IGLHRC's research partners:

In Japan, the research was coordinated by Azusa Yamashita, under the auspices of Gay Japan News. The Japan chapter was authored by Azusa Yamashita, Monique Hanako Rose, Tomoko Ohtsuki, and Yukiko Hosomi.

The Malaysia research was coordinated through Knowledge and Rights with Young People Through Safer Spaces (KRYSS).

In Pakistan, the project was coordinated through O. In both Malaysia and Pakistan, the research coordinators and authors asked to remain anonymous for fear of reprisals.

The Philippines research was coordinated by Angie Umbac, under the auspices of the Rainbow Rights Project. The Philippines country chapter was authored by Oscar Atadero, Angie Umbac, and Joy Cruz. Joy Cruz works with the Society of Transsexual Women of the Philippines.

In Sri Lanka, the research was coordinated by Jayanthi Kuru Utumpala, under the auspices of the Women's Support Group. The Sri Lanka chapter was authored by Jayanthi Kuru Utumpala, Marini Fernando, and Sermal Wijewardene.

The regional overview was written by Grace Poore, and edited by Marianne Møllmann, IGLHRC Director of Programs, Roberta Sklar, IGLHRC Director of Communications, and Jessica Stern, IGLHRC Executive Director. We thank Susana Fried, HIV and Health Adviser at the United Nations Development Fund, and Svati P. Shah, Assistant Professor, Department of Social and Cultural Analysis, New York University, for their invaluable comments on the draft. Kristen Thompson proofread final chapters.

An initial research framework and methodology were developed by Bina Fernandez, while Strength in Numbers helped with data analysis tools. The final research process was designed by Grace Poore and Ging Cristobal.

Kathy Mills visually conceptualized, designed and laid out the report.

We are grateful for the generous support from the Arcus Foundation and the Global Fund for Women.

We are deeply indebted to our partners and to the many courageous women and trans persons who shared their testimonies and recommendations with us, and without whom this project could never have moved forward.

RESEARCH PARTNER ORGANIZATIONS



The International Gay and Lesbian Human Rights Commission (IGLHRC), founded in 1990, is a leading international human rights organization dedicated to improving the lives of people who experience discrimination or abuse on the basis of their sexual orientation, gender identity or gender expression. It is dedicated to strengthening the capacity of the LGBT human rights movements worldwide to effectively conduct documentation of LGBT human rights violations, train activists to carry out evidence-based advocacy, and engage in human rights advocacy with partners around the globe.



Gay Japan News was established in 2005. It advocates for LGBT rights, translates LGBT-related news reports from around the world for Japanese LGBT people and allies, and submits shadow reports on LGBT human rights concerns in Japan to United Nations treaty bodies. Current directors are Hiroshi Mochizuki and Azusa Yamashita.



KRYSS is committed to ending discrimination and violence based on sexual orientation and gender identity in Malaysia. It works primarily with young people and those who are non-heteronormative. KRYSS carries out research, training, documentation, litigation advocacy, and uses creative platforms to advocate for non-discrimination and non-violence.



O was founded in Lahore, Pakistan in March 2009. It is dedicated to the empowerment of sexual minorities, specifically LGBTQ people. O is committed to resilience, knowledge-making and flourishing of queer communities, sexual minorities and their families and friends, and dedicated to “work by our community for our community.”



The Rainbow Rights Project (R-Rights) of the Philippines was established in 2005. It is an LGBT legal advocacy organization, comprised of gay and lesbian lawyers and gender activists. It uses policy research and analysis to advocate for legislative and legal reform, and educates the LGBT community and state institutions about LGBT rights under state law.



Women's Support Group (WSG) was established in 1999, and was the first women's organization that worked to protect and promote the rights of lesbians, bisexual women and transgendered (LBT) persons in Sri Lanka. For 15 years, WSG operated a drop-in centre and resource /research center for LBT people. Through women's rights and human rights organizations, WSG advocated for LBT rights inclusion in the national human rights agenda.

GLIMPSES OF LBT RESILIENCE

JAPAN

An earthquake and tsunami devastated the island of Hokkaido in Northeast Japan. Azusa Yamashita, the Japan research coordinator's home is in Iwate Province near the epicenter of the earthquake. Although Azusa, her team and their families were not physically injured or made homeless by the disasters, they had to turn their attention to emergency relief efforts.

Azusa shared: "I had to evacuate. My flash drive was in my backpack in my office. [Given how much focus we placed on data security and how difficult it would be to replace lost or damaged interviews it was a big worry that] I had to leave it there for one hour before I was able to retrieve it. Since March 11, there has been limited transportation, especially the bullet train. All documentation has stopped. Things are not back to normal. We have aftershocks daily. More earthquakes are expected. And the nuclear radiation... So people are not comfortable traveling to [other] places right now.

Bringing people to Tokyo for a training, it's unsafe... LBT people face more difficulties in their daily lives after the disasters, even more than before... I live in Iwate province. Ninety-five percent of LBT are not out here because of fear of discrimination and isolation from the local community. So they hide their identities in their daily lives.

When this disaster happened, people had to go live in shelters with strangers and experienced discrimination. Living a double life in such a situation made it even more difficult... LBT people are mostly invisible in Japan – in the workplace, in the family, in friendship circles. Society doesn't even believe LBT people exist ... Five percent of the 150 women tsunami survivors said they are lesbian. So they exist."

(May 10 2011, November 28, 2012. IGLHRC notes from Skype meeting with research coordinators.)

MALAYSIA

An anti-queer protest was held in Kuala Lumpur by a network of thirty or so Malay groups – the first such protest in Malaysia. The Malaysia research coordinator shared, “Religious people were unhappy that SOGI [sexual orientation and gender identity] was included in the report of Suhakam (National Human Rights Commission), which overshadowed the launch. They challenged the Commissioners and accused Suhakam of promoting homosexuality. The Commission said, ‘Discrimination is discrimination and human rights is for everyone’ but later Suhakam went back on this statement it made in public and made a disclaimer... The Ministry

of Education is disseminating guidelines on gender confusion, guidelines to spot symptoms of gays and lesbians... The Ministry of Information and Technology sponsored an anti-LGBT musical called Asmara Songsang (Deviant Love)... The Minister of Education made a statement and gave out leaflets that homosexuality should be eradicated in Malaysia.

(April 19, 2011, September 18, 2012, July 19, 2011, July 9, 2013. IGLHRC notes from Skype meetings with research coordinators.)

PAKISTAN

The governor of Punjab, Salman Taseer, was shot twenty-six times by his personal bodyguard for criticizing the Blasphemy Law in Pakistan. [Section 295 of the Penal Code severely penalizes words, images and actions that are considered by state and religious authorities to be insulting to Islam, Muslim beliefs, the Quran or prophet Muhammad.]

The killer claimed he acted in defense of Islam – earning the support of thousands of supporters. [Six months later] in June 2011, public outrage erupted when the US embassy in Islamabad publicized an LGBT Pride event, upsetting the researchers since it made them feel even more exposed and vulnerable.

Military drone strikes by the US and anti-American protests added to feelings of hyper-vigilance. As the Pakistan team’s coordinators reported, “The political situation is so overt that people feel threatened. There are demonstrations on the streets every day. There’s an air of insecurity so this is on everyone’s minds... people are feeling the emotional impact of interviewing.

They feel numb and emotional.

They did not realize how difficult it would be, especially listening to people’s pain on a regular basis. The issue is, there is no trustworthy and affordable third party psychiatrist ... The US embassy held its Pride in June [2011] and announced it on its website. Jamaat-e-Islami, a right wing Islamist Party, said, ‘We will not tolerate US harboring gays.’ There’s a red zone [at the embassy] which they [anti-American protesters, including Islamists] tried to violate and police beat them up. One week after Pride, the media picked it up [the story that the embassy had organized a gay pride event in Pakistan]. Till now, one and half weeks later, people are still talking about homosexuals. Our group will not speak out publicly because of fears and security concerns. The team is scared [but] also thoughtful.”

(January 11, 2011, February 1, 2011, July 19, 2011. IGLHRC notes from Skype meetings with research coordinators.)



EXECUTIVE SUMMARY

Lesbians, bisexual women and transgender (LBT) individuals in Japan, Malaysia, Pakistan, the Philippines and Sri Lanka face violence and exclusion in every sphere of their lives. This violence is fueled by laws that criminalize same-sex relations and gender non-conformity and encouraged by governments who tolerate, endorse, or directly sponsor the violent clamp-down on those who do not follow prevailing norms on sexual orientation, gender identity and gender expression.

This is the main finding from research coordinated by the International Gay and Lesbian Human Rights Commission (IGLHRC) and conducted over a two-year period by women's rights, sexuality rights and gender rights activists based in Japan, Malaysia, Pakistan, Philippines and Sri Lanka. Interviews were conducted in Japanese, English, Malay, Tamil, Urdu, Tagalog, Cebuano, Ilocano and Sinhala. The researchers uncovered high levels of family violence perpetrated against LBT individuals as well as widespread discrimination in education, health and work sectors.

LBT people faced this frequent violence and daily discrimination without any protection from the state. While many found strength in knowing that they had survived the violence they were subjected to, the quality of survival was affected – even compromised – by the ubiquity of discourses in the public sphere justifying abuse against lesbian and bisexual women. In particular, public discourse sanctioned abuse against gender non-conforming women and men.

While country contexts differed on the basis of culture, religion, legal systems and inherited colonial legacies, there were undergirding realities that LBT people faced in the five Asian countries in some or all of the following ways:

- Homosexuality and gender non-conformity were criminalized directly or indirectly through penal code provisions that specifically targeted lesbian, gay, bisexual and transgender (LGBT) people or through laws concerning public order, vagrancy or impersonation that were implemented disproportionately to punish LGBT people.
- Homosexuality (same-sex relations between women) and gender non-conformity were penalized and condemned under religious laws.
- High-level government officials endorsed intolerance and even actively participated in promoting harmful messages that encouraged abuse or discrimination against LBT individuals. Government-controlled media and state-supported religious leaders perpetuated cultural messaging that preached intolerance against individuals with non-conforming sexual orientation, gender identity and gender expression.
- LBT victims of violence were disadvantaged even before they could seek redress for violence – due to the risk of being criminalized¹ by the state, stigmatized by society, vilified by religious groups, and rejected by family when their identities or explanations of the violence were revealed.
- There was a close correlation between

general gender inequality and the additional oppression of LBT individuals. Where women in general are expected to conform to stringent norms on sexuality, non-conforming LBT people are violently punished.

LBT individuals were punished by their families and communities for “betraying” their heritage, religion and culture.

The five-country study confirmed the existence of complex layers of intersecting discrimination where violence against LBT individuals was not only motivated by rejection of sexual orientation, gender identity and gender expression but, in many instances, also other identity markers (e.g., race, ethnicity, class, economic status, religion). In this way, LBT individuals were punished by their families and communities for “betraying” their heritage, religion and culture. Those without financial advantage to “get out of” violent situations or who were targeted for violence because they were poor were even more vulnerable because of increased opportunities for violence.

While findings of the studies may not be representative of the experiences of all LBT people in Sri Lanka, Philippines, Pakistan, Malaysia and Japan, they represent experiences that show patterns of violence that require serious attention and redress. At the same time, the focus of the research itself is important because violence against LBT people is under-reported in many Asian countries. As this research shows, one reason for the under-reporting is precisely the “private nature of the violence.” It occurs in the private sphere (of family, home, intimate relationships) while being encouraged by the stigmatization – and in some instances, demonization – of LBT people in the public sphere (by state institutions, government leaders, media, employers, non-governmental organizations, police and people on the streets).

¹ Worldwide, male homosexuality is prohibited and punishable under anti-sodomy laws in 76 countries [http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2013.pdf] and lesbianism is illegal in about 30 countries [<http://ilga.org/>]. Non-conforming gender behaviors are criminalized under wide-ranging laws, frequently categorized as public order laws or morality laws (i.e., vagrancy laws, anti-cross dressing laws and impersonation laws). The risk of criminalization under state law is compounded by the risk of being sanctioned under state-endorsed religious law, such as provisions in Sharia or Islamic law, which also carry heavy if not heavier penalties.

IGLHRC and the five groups that undertook the research urge comprehensive recommendations to the executive and legislative branches of government, state institutions and civil society groups. The following is a summary:

- The state must take responsibility for ensuring an environment that is supportive of *all* women's rights, not merely the rights of some women.
- The state must exercise due diligence in preventing violence and promoting the safety and dignity of all marginalized and vulnerable populations. These include ethnic and religious minorities, people with disabilities, indigenous communities, and sexual and non-conforming gender minorities.
- The state must not endorse and, in fact, must denounce the misuse of religious discourse to promote intolerance, stigmatization and violence against LBT people.
- The state must comply with international treaties² it ratifies and honor international agreements it makes, such as the Beijing Platform for Action,³ in order to remove obstacles from both the public and private spheres that prevent all women (female bodied, gender variant, lesbian, bisexual) and female-to-male transgender men from enjoying violence-free lives.

2 All five of the research countries have ratified the CEDAW Convention. However, it is only since 2010 that LBT groups and women's groups in Malaysia, Sri Lanka, Japan and the Philippines have used the Convention to advocate protections from violence. The impetus for this is most likely Recommendation 28 on the core obligations of states that includes lesbians as a vulnerable group. The research countries have also ratified the Convention On The Rights Of The Child. In addition, Japan, Philippines and Sri Lanka have signed the International Covenant on Civil and Political Rights. These treaties explicitly name sexual orientation (and in some cases gender identity) as a protected category.

3 "Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women," UN Women website, accessed March 8, 2014, <http://www.un.org/womenwatch/daw/beijing/platform/>.

- The state must recognize that violence and discrimination against LBT youth and adults hinders the achievement of the Millennium Development Goals (MDGs) on poverty eradication, gender equality, universal healthcare and universal primary school education. As such, the state must integrate LBT concerns and needs into the MDGs and legal and policy reforms. This includes extending legal protections against violence and discrimination, decriminalizing adult consensual same-sex relations, decriminalizing gender non-conformity, and penalizing violence against LBT people in the public and private spheres by State and non-State violators.

The state must not endorse and, in fact, must denounce the misuse of religious discourse to promote intolerance, stigmatization and violence against LBT people.

- State actions must be accompanied by stronger community capacity for sustainable and supportive interventions as part of civil society accountability to disadvantaged communities. It should not be the expectation that individual LBT victims be self-reliant and resilient in order to deal with violence on their own while waiting for State action to reduce violence.



"No personal opinion, no religious belief, no matter how deeply held or widely shared, can ever justify depriving another human being of his or her basic rights. And that is what we are discussing here: depriving certain individuals of their human rights – taking away their right to life and security of person, their rights to privacy, to freedom from arbitrary detention, torture and discrimination, to freedom of expression, association and peaceful assembly ... **we should recognize that underlying all of this violence and discrimination is prejudice. We know from experience that you don't eliminate prejudice by changing the law alone; you must change people's hearts and minds as well.**"

UN High Commissioner for Human Rights, Navi Pillay to the Panel on Ending Violence and Discrimination against Individuals on the Basis of their Sexual Orientation and Gender Identity at the Human Rights Council 19th Session, Geneva, March 7, 2012



"In many countries, discrimination towards gay and lesbian people is hardwired into the law. This is the case, for example, in some 76 countries where individuals face criminal sanctions just for loving and engaging in private in consensual sexual relations with another adult of the same sex. And even where homosexual conduct is not explicitly criminalized, the law may be applied in a discriminatory manner to persecute and punish people perceived as being gay or lesbian as well as those who dress in a manner that challenges gender stereotypes. We also know from experience that discriminatory laws reinforce and lend legitimacy to discriminatory attitudes at a popular level. If the State treats some people as second class, or second rate, or, worse, criminals, because of their sexual

orientation or gender identity, it invites members of the public to do the same. The result is an alarming and deeply entrenched pattern of violence and discrimination directed at people who are or are perceived to be lesbian, gay, bisexual or transgender."

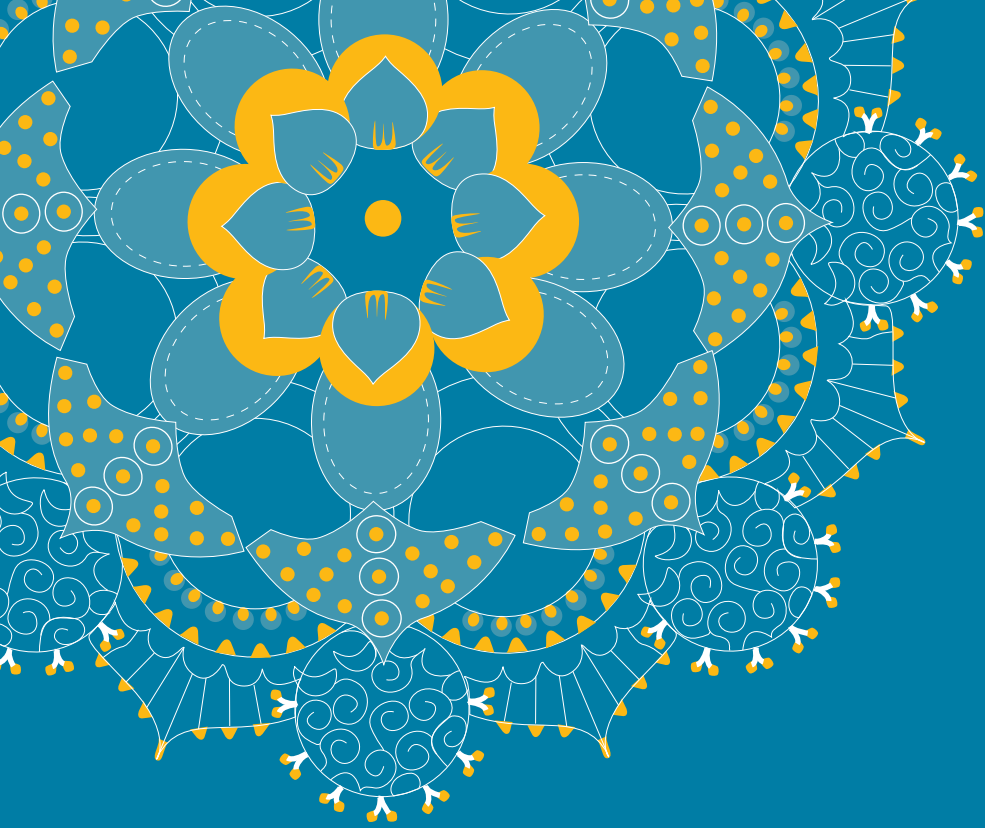
Ivan Šimonović - Assistant Secretary-General For Human Rights to the Panel on Ending Violence and Criminal Sanctions Based on Sexual Orientation and Gender Identity, New York, December 8, 2011



"Under the broad and ill-defined mantle of "culture" States may fail to recognize the diverse voices within their own communities, or may deliberately choose to suppress them. ... **Because of the stigma attached to issues surrounding sexual orientation and gender identity, violence against LGBT persons is frequently unreported, undocumented and goes ultimately unpunished. Rarely does it provoke public debate and outrage. This shameful silence is the ultimate rejection of the fundamental principle of universality of rights. Impunity for crimes of violence against LGBT persons suggests that, in many societies, they are seen as less deserving of the protection of the law.** In the final analysis, their lives are seen to be

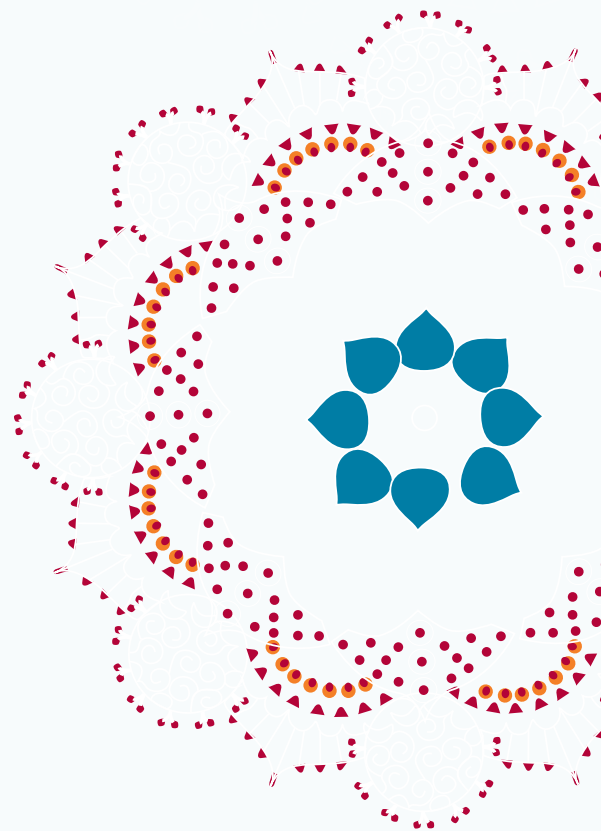
worth less, along with the lives of others whom society unjustly rejects because of their faults or flaws, real or imagined. In the face of that reality, the responsibility of the State to extend effective protection is, if anything, heightened."

Louise Arbour (of the Office of the United Nations High Commissioner for Human Rights) Presentation to the International Conference on LGBT Human Rights, Montreal, July 26, 2006



CROSS-COUNTRY ANALYSIS



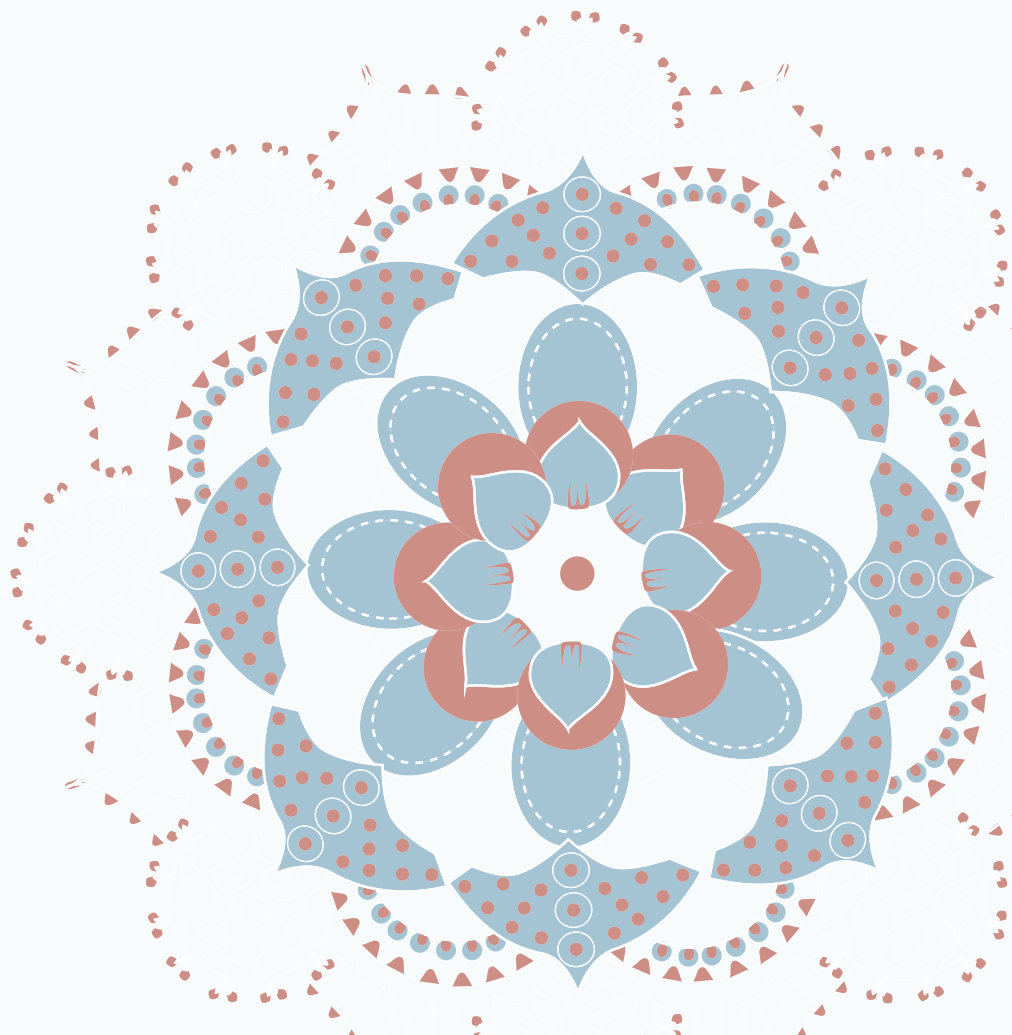




VIOLENCE

Against Lesbians, Bisexual Women
and Transgender People in Asia:
A Five Country Study

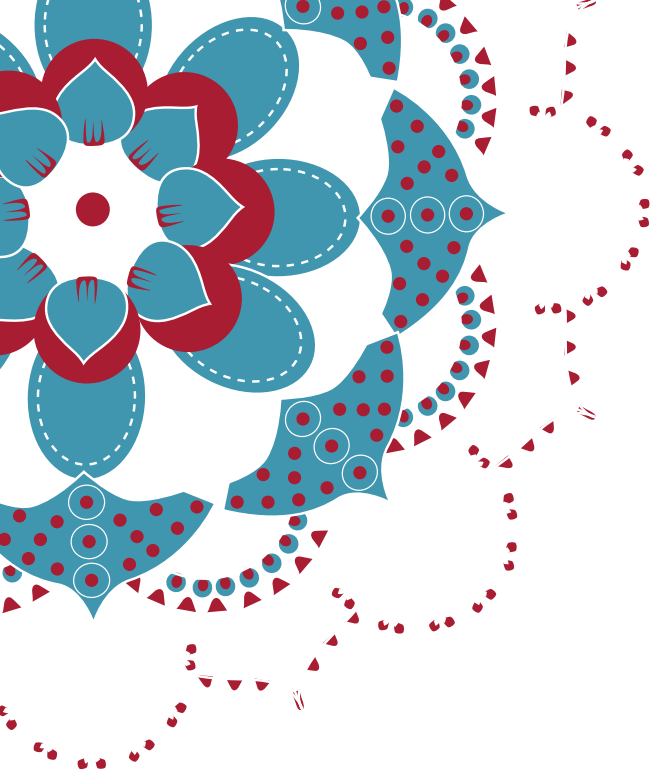
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INTRODUCTION

VIOLENCE: Through the Lens of Lesbians, Bisexual Women and Transgender People in Asia is based on research conducted between November 2010 and March 2012 by women's human rights groups, sexuality rights groups, and gender rights groups in Japan, Malaysia, Pakistan, Philippines and Sri Lanka.¹ Each country team analyzed its own data and authored a country chapter presented in this regional report.

¹ Groups that partnered with IGLHRC on this research are Gay Japan News; KRYSS; O; Rainbow Rights Project; and Women's Support Group.

Lesbians, bisexual women and transgender (LBT) individuals who shared their stories about violence as well as those who did the interviewing and reporting took a big step forward with this project. They have now made available evidence-based information, which was previously scant to virtually non-existent, using human rights documentation techniques.

The findings prove the prevalence and severity of violence against women with non-conforming sexual orientation (such as lesbians, women attracted to women, bisexual women) and individuals with non-conforming gender identity and gender expression (such as transgender men, transgender women, tomboys, butch lesbians) in the five Asian countries. While the findings of this five-country study may not be representative of the experiences of all LBT people in Sri Lanka, Philippines, Pakistan, Malaysia and Japan, they represent experiences that show violence patterns that require serious attention and redress. Our hope is that others will build on this research to expand the understanding of root causes of violence against women and transgender people in Asia on the basis of their sexual orientation, gender identity and gender expression.

The impetus for undertaking this project emerged during several consultations with lesbian, gay, bisexual and transgender (LGBT) activists in Asia who were asked what challenges they faced in their work, and which of these challenges they were not able to address.² A recurrent theme

² In 2007 and 2008, IGLHRC's Asia Program initiated dialogues with lesbian, gay, bisexual and transgender (LGBT) activists in several different Asian countries to identify key issues that for some reason were being overlooked by various civil society sectors such as women's groups, gay men's groups and human rights groups – issues such as availability of funding, government's failure to respond, government harassment, limited activist capacity, and under-articulated priorities. In May 2009, IGLHRC invited twenty lesbian, bisexual women and transgender activists from eleven countries – China, India, Indonesia, Japan, Malaysia, Nepal, Pakistan, Philippines, Sri Lanka, Taiwan and Thailand – to a regional consultation and strategy workshop held in the Philippines to discuss violence against LBT people and the need for documentation. Five of the eleven participating countries chose to partner

in the consultations was the under-reporting of violence, particularly against lesbians, and more broadly, violence against lesbians, bisexual women and transgender people. The activists highlighted four possible explanations for this underreporting:

1. **Where the law prohibits discrimination against marginalized and vulnerable populations, these laws usually do not extend protections to LBT people.** For instance, laws meant to protect women from domestic violence and sexual violence are often not applicable to LBT people who are similarly victimized. This is the case even when the law recognizes *de facto* (i.e., non-married) couples.
2. **In cases where the law may be applicable to LBT people, victims fear reporting violence because their experience with police and law-enforcement tells them such reporting invites mistreatment – in the form of humiliation, rejection, discrimination, or possibly even criminalization for being lesbian or transgender.**
3. **The social stigma that continues to be associated with non-conforming sexual orientation, gender identity and gender expression also means that many organizations whose mandates focus on human rights, workers' rights, and women's rights, as well as other more mainstream issues, distance themselves from LBT issues and rights.**
4. **The relentless pressure of compulsory heterosexuality along with gender-based discrimination and violence creates a vicious cycle of victim isolation, self-blame for the violence, absence of redress, internalized homophobia or transphobia, and perpetrator impunity.**

with IGLHRC based on their willingness to prioritize violence against LBT people, undertake and deliver research and documentation, be trained in human rights documentation, use their research findings for local advocacy, partner with an international LGBT rights organization, and work as part of a regional collective.

This research project sets out to examine these country conditions. See Appendix B for examples of country conditions affecting women's rights and LBT rights.

The research is advocacy-driven in that a key objective of the research is to carry out evidence-based advocacy at the national, regional and international levels. The research objective informed the formulation of research questions.³ See Appendix A for methodology.

3 The following are collectively identified research goals for this project: document the nature, extent and impact of violence against LBT people; identify LBT people's strategies to survive (e.g., coping, resisting, avoiding) violence and highlight successful strategies; document patterns and modes of violence in varied contexts (e.g., family, community, legislative, workplace, educational institution, police); identify resources and institutions that can be accessed for support; identify context-specific strategies for long-term and ongoing monitoring and responses to violence against LBT people; foreground the intersectionality of issues facing LBT people; and disseminate research findings. The following are advocacy goals that informed the research: push for legislative change; strengthen solidarity networks with potential allies; engage the women's movements to push for legal and attitudinal reform; advocate with the health and human rights movements to integrate LBT issues in their agendas; conduct targeted education and sensitization campaigns for/with existing and potential allies (e.g., messaging to end hostility against and guarantee access of LBT people to justice at the family, community, national and international levels); encourage allies to expand and identify LBT-friendly services based on the principles of non-discrimination and equality; improve resources and support mechanisms for victims and survivors of violence based on sexual orientation, gender identity and gender expression; build the LBT community by specifically identifying and conducting outreach to LBT individuals and activists; educate LBT people about their rights with regard to the law, community resources and survival strategies; write shadow reports to statutory bodies and for Universal Periodic Reviews; provide training, counseling and legal assistance so that LBT people become stronger human rights defenders and activists; and explore opportunities for a regional cross-country initiative.

NAVIGATING UNFRIENDLY ENVIRONMENTS

The activists involved in this research are not only human rights documenters but also human rights defenders.⁴ They gathered testimonies of violence even as they lived through violence themselves, including: direct experiences of condemnation, often with reference to religion; vilification by the media; societal prejudice; LGBT scapegoating by politicians; and hostile public commentary such as hate speech by government leaders. Simply participating in the research placed the country teams at risk for violence for two reasons: firstly, the research made their activism visible; and secondly, the research topic was itself seen as taboo, thus increasing the potential for negative intervention. This harsh reality shaped documentation efforts along the way. For instance, in Pakistan, the research coordinators reported that it was dangerous to ask lesbians and bisexual women to join the research team because being associated with

the project would imply that they themselves were defying societal expectations regarding women's sexuality and gender norms.

Outreach to find people to interview was always a negotiation between breaking the silence about violence and identity and preserving silence about the research focus.

This affected the make-up of the team.⁵ In Sri Lanka, some stakeholders (a lawyer and a district medical officer) were aggressively homophobic towards interviewers, and they raised questions imputing that a hidden agenda of the researchers was to destabilize Sri Lankan culture. These stakeholders could potentially have jeopardized the future of the project. In Malaysia, researchers had to navigate between protecting people's identities and ensuring transparency about the project in order to build credibility. In these three countries in particular, outreach to find people to interview was always a negotiation between breaking the silence about violence and identity and preserving silence about the research focus. Security risks also affected access to and availability of LGBT-friendly, reliable and trustworthy translators and transcribers, who required careful vetting – limiting possibilities for outsourcing translation and transcription.

In sum, researchers had to walk the line between preserving silences and breaking silences, between protecting people's identities and being open about the project, in order to build credibility and draw more participants willing to be interviewed. Researchers had to balance guarding the information being collected and sharing it with people to whom translation or transcription was outsourced. All of this was accomplished in political and social conditions that at times were hostile and required teams to thoughtfully navigate safety concerns. These concerns about safety manifested differently depending on ethnicity, class, religion, age and economic circumstances of LBT interviewees.

4 Many members of the research teams engaged in grassroots activism in their countries and at the regional level such as demanding clean and fair national elections [Bersih 2.0 People's Tribunal, <http://www.bersih.org/>]; fighting State censorship ["Seksualiti Merdeka Says Ban on Festival Unconstitutional, Illegal," *The Malaysian Insider*, January 10, 2012, <http://www.themalaysianinsider.com/malaysia/article/seksualiti-merdeka-says-ban-on-festival-unconstitutional-illegal>]; contending with religious homophobia and transphobia ["LGBT A Jewish Agenda, Says Perkasa," *fz.com*, October 18, 2012, <http://www.fz.com/content/lgbt-jewish-agenda-says-perkasa>]; "Transgender Women's Constitutional Challenge To Sharia Law Fails In Malaysia," *IGLHRC*, October 15, 2012, <http://iglhrc.wordpress.com/2012/10/15/transgender-womens-constitutional-challenge-to-sharia-law-fails-in-malaysia/>]; organizing post-disaster relief for LGBT people ["Beyond Invisibility: Great East Japan Disaster And LGBT In Northeast Japan," *FOCUS* September 2012 Vol. 69, <http://www.hurights.or.jp/archives/focus/section2/2012/09/beyond-invisibility-great-east-japan-disaster-and-lgbt-in-northeast-japan.html>]; and mobilizing civil society opposition to the exclusion of sexual orientation and gender identity in the first ever human rights instrument in Asia, the ASEAN Human Rights Declaration ["Demand Inclusion of LGBT Rights in the ASEAN Human Rights Declaration!" *Care2 Petition Site*, November 6, 2012, <http://www.thepetitionsite.com/338/261/722/demand-inclusion-of-lgbt-right-in-the-asean-human-rights-declaration/>].

5 Much of O, Pakistan's documentation was carried out by gay men.

While researchers wrote up their respective country reports, security risks continued to challenge the project. One research team withdrew a quote by a religious leader from their report because he contradicted the misconception that homosexuality was prohibited in his religion. They were concerned that disseminating the report with the quote left intact might spark a backlash by religious extremists in their country who have mobilized a nationalist movement.⁶ Another research team, fearing backlash, false accusations of blasphemy, and risk of vigilante violence – rationalized by a Penal Code provision that imposes long prison terms and fines for blasphemy⁷ – decided not to produce a country report or disseminate the findings of their research inside the country. One researcher explained the team's trepidation, saying, "... it will be risky for us to make any public statements." A third research team re-strategized dissemination of the research after government leaders and other leading politicians publicly called gay people "deviant aspects" of society, urged parents to monitor "gay symptoms," and advocated forced institutionalization of gay people.⁸

6 "Fears Mount Over Sri Lanka Anti-Muslim Campaign," *AP News*, April 7, 2013, <http://asiancorrespondent.com/104533/sri-lanka-anti-muslim-campaign-threatens-tensions/>.

7 Section 295 of the Pakistan Penal Code imposes a minimum ten years to life in prison and/or fines for words, images and actions that are considered by State and religious authorities to be insulting to Islam, Muslim beliefs, the Quran, or prophet Muhammad. See Aakar Patel, "Pakistan's blasphemy law," *The Express Tribune*, August 26, 2012, <http://tribune.com.pk/story/426498/pakistans-blasphemy-law/>. Pakistan also has Section 377 of the Penal Code, which criminalizes non-procreative sex and targets sexual non-conformity. The law states: whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to fine. Penetration is sufficient to constitute the carnal intercourse necessary to the offense described in this section. Section 294, which criminalizes obscene acts was also a concern to an already anxious research team.

8 Anna Leach, "16,000 Parents and Teachers Told to Curb LGBT Behavior in Malaysia," *Gay Star News*, February 4, 2013, <http://www.gaystarnews.com/article/16000-parents-and-teachers-told-curb-lgbt-behavior-malaysia040213>; Anna Leach, "Malaysian

These examples reiterate the additional challenges of undertaking advocacy-driven research. Our activist research partners had to be cognizant of their end goals, watching shifts in the political landscape towards human rights, LGBT rights, and women's rights. This was necessary in order to pre-empt pushback that would divert attention away from the research findings they wanted to highlight and instead make the LBT research participants or researchers the focus of criminal investigation.

INCLUSION OF TRANSGENDER MEN

Including transmen in this research prompted an unexpected and lengthy debate driven by some of the researchers' uncertainty about whether or not transmen would be offended if they were asked to participate in a project about non-heteronormative women. On the one hand, the Philippines team was concerned that including transmen in a project that was focused on women could and would be read by transmen in the Philippines as an imposition of the term "woman" on them. The team also felt strongly that the research should focus on lesbians, bisexual women and transwomen. On the other hand, IGLHRC and other country teams did not want the research to reinforce the general invisibility of transmen in LGBT spaces or add to the silence about issues faced by transmen in Asia. In all five research countries, transmen are the most invisible of LGBT groups and communities.

With respect to this debate, we came to the following resolutions:

- Focus the research on: women with non-conforming sexual orientation; people assigned

Deputy Prime Minister Says LGBT People Need Counseling," *Gay Star News*, April 5, 2012, <http://www.gaystarnews.com/node/1847>; Anna Leach, "LGBTs Are Deviant Aspects of Malaysia Says Prime Minister," *Gay Star News*, June 27, 2012, <http://www.gaystarnews.com/article/lgbts-are-deviant-aspects-malaysia-says-prime-minister270612>; Anna Leach, "Politician Calls For Gay Rehab Center in Malaysia," *Gay Star News*, March 22, 2012, <http://www.gaystarnews.com/node/1613>.

female identity who now identify as men; and people assigned male identity who now identify as women.⁹

- Transgender people across the spectrum were eligible for this research.
- The only people who would not be included in the study were cisgender heterosexual men, cisgender gay and bisexual men, and cisgender heterosexual women.

VIOLENCE DEFINITIONS

The research looks at the continuum of violence. LBT interviewees were asked about **three forms of violence**:¹⁰ physical, emotional and sexual violence.

- **Physical violence** examples include: battery (e.g., beating, hair-pulling, throttling, kicking, pushing, burning, head-butting, tying up, etc.); physical confinement; imprisonment; depriving of basic necessities (such as food, shelter, clothing); forcible electro-shock therapy; assault; or other forms of bodily injury.
- **Emotional violence** is a term interchangeably used with mental and psychological abuse. Some victim-survivors of this kind of violence might call it a violation of their spirit or dignity. The types of actions or behaviors that constitute emotional violence in this research are: verbal abuse (e.g., insults, taunts, swearing, denigration, allegations of abnormality); threats (e.g., to harm self or others, abandon, evict, imprison, disclose sexual orientation to others, etc.); controlling actions (e.g., restricting socializing with family, friend, or neighbors, invading

privacy, monitoring communication); silent hostility (e.g., non-verbal behaviors that express contempt, denial, rejection of sexual orientation, gender identity, gender expression); neglect (e.g., withholding financial support, denying human contact, denying medical treatment or medication).

- **Sexual violence** examples include: threats to rape; derogatory sexual name calling; forcibly showing sexual images; unwanted sexual language; unwanted sexual touching; forced sex; “corrective” rape; forced participation in the filming of sexual activity; filming sexual activity without consent; and recording sexual assault.

Acts of omission and commission were included because they were experienced as violent practices by LBT individuals living under the country conditions where the research was undertaken.

- **Acts of omission** consist of failing to help someone in need. For example, employers who either fail to intervene when an LBT employee is sexually harassed or fail to prevent future sexual harassment are responsible for acts of omission in both cases.
- **Acts of commission** or repression consist of directly depriving people of their human rights. For example, employers who demand sexual favors when they discover someone’s sexual orientation or gender identity, or neighbors who threaten to rape a lesbian couple living next to them, are responsible for acts of commission.

LBT people were asked about experiences of **violence in the public sphere and violence in the private sphere**.

- **Violence in the public sphere** is perpetrated by State and non-State actors. This type of violence includes: violence by State institutions such as police or immigration authorities; violence facilitated by State policies, such as endorsement of harmful religious or cultural practices; and violence that occurs in areas controlled almost exclusively by the State (e.g., social welfare departments, religious departments,

9 The regional report refers to the research as violence against lesbians, bisexual women and transgender people in Asia or LBT people.

10 Homicide on grounds of sexual orientation, gender identity or gender expression is considered violence, but we exclude it from the research since it is not within the scope of the study. However, suicide or attempted suicide is not considered violence in this research but an impact of violence.

educational institutions, passport control centers, police precincts, courts, etc.). Public violence also covers violence on the streets, neighborhoods, ethnic and religious communities, public gatherings, places of work, school, restaurants, stores, public transportation and entertainment establishments.

- **Violence in the private sphere** refers to violence in the private realm, household, family, intimate relationships or so-called “domestic” sphere. It also covers violence by community members. Violence in the private sphere is sometimes problematically thought of as “private violence,” wrongly implying that victim-survivors are not entitled to state protections or redress for this category of human rights violations.

Violence by private individuals and non-State actors contributed significantly to the hostile environment in which the majority of the LBT people involved in the study live.

The research covers **three categories of violators/perpetrators**: State, individual and institutional.

- **State violators** include the police, immigration authorities, officers of State-established religious departments and legislators. The violence perpetrated by State actors includes: deliberately using the State apparatus to commit acts of violence; passing laws that discriminate and lead to violence; and facilitating impunity of violators (e.g., by police and immigration authorities). State policy, action and inaction set the tone for public attitudes and treatment towards LBT people. For example, national legislation, local ordinances, ministerial directives, political speeches, and government endorsement of positions through State-controlled media or by religious leaders all influence public reactions towards LBT people. Indirect actions of the State also constitute a violation of human rights obligations, such as its failure to protect and prevent violence against LBT individuals or to create an environment conducive to ensuring the human rights of LBT people. For instance, the State condon-

ing and being complicit with the violence committed by non-State actors and private individuals – by not condemning or punishing violence – constitutes a violation of human rights. While the human rights framework does not categorize the State’s failure to prevent violence and its complicity with violence as violence per se, it does stipulate a State obligation to prevent and punish the violence. Also, feminists argue that under patriarchy the state wields tremendous power; complicity in the violence, either by excusing it or remaining silent when aware of it, gives permission for violence to continue unchecked. They assert that for people who already lack access to redress mechanism, the State’s failure is experienced as violent action. Indeed, the respondents as well as researchers in this project experience this as a lived reality.

- **Institutional violators** are representatives of State institutions (e.g., medical or mental health professionals working for government hospitals and psychiatric facilities, journalists working in government-controlled media, teachers in public or state schools) and non-State social institutions (e.g., religious leaders) who carry out harmful actions that cause harm to LBT people.¹¹ Examples of institutional violence that LBT individuals were asked about for this research included forced mental health treatment because of same-sex or gender non-conforming behaviors that were considered by medical and mental health professionals to be “abnormal,” or religious condemnation and penalties because of lesbianism or non-conforming gender expression.
- **Individual violators** include neighbors,

11 In Malaysia, there are State and non-State religious institutions. The government-established Islamic religious departments are State institutions that employ religious officers to monitor syariah law compliance and arrest non-complying Muslims (such as gender non-conforming individuals who are Muslims). Non-State religious institutions would include Muslim mosques, Christian churches, Buddhist and Hindu temples or religious organizations.

passersby in public spaces, family members, intimate partners, religious vigilantes, or co-workers. Violence by individuals covers harmful acts against LBT people such as sexual taunting, verbal hostility, blackmail, extortion, harassment, threats, physical violence and property damage.

LBT interviewees were asked about **two dimensions of violence**: the **interpersonal dimension**, where a person or small group commits harmful actions (e.g., when family members force LBT people to go to a psychiatrist to “cure” them, or when family members use physical violence and threats to “dissuade” transgender women from wearing make-up or growing long hair); and the **collective dimension**, where a mob or gang of attackers target LBT individuals.

Regardless of whether the violence occurs in public or private spheres, by State or non-State actors, representatives of the State and institutions of the State have a human rights obligation to refrain from perpetrating or condoning violence, and to exercise due diligence to prevent and punish the specific violence perpetrated against LBT people.

SUMMARY OF CROSS-COUNTRY FINDINGS

Several regional trends emerged from this research on violence against LBT people in Asia:

1. Laws prohibiting violence against women in Asia were directly or indirectly discriminatory and did not extend adequate protections – or in some cases any protections – to LBT people. In many respects, it was reported that the State not only failed to prevent but also condoned violence against female-bodied and transgender people.
2. Emotional violence was the most commonly reported form of violence for LBT people in Asia, both in public and private spheres, regardless of who the perpetrator was. Emotional violence reported in this study often continued for many years with long-term consequences for an individual’s emotional and physical well-being.
3. The family was the primary perpetrator of violence according to LBT people in Asia. Family members carried out emotional, verbal, physical and sexual violence against LBT people. This violence occurred regularly and had greater and longer lasting impact than violence perpetrated by non-family members.
4. LBT people in Asia reported an unexpectedly high occurrence of intimate partner violence, including physical and sexual violence. Perpetrators of partner violence were same-sex partners, dating partners, and heterosexual and cisgender partners of transgender individuals. There were also reports of spousal violence by heterosexual husbands of lesbians in forced marriages.
5. Sexual violence against LBT people in Asia was overwhelmingly perpetrated by individuals who knew their victims. Most perpetrators tended to be male (i.e., heterosexual, cisgender).
6. Greater visibility of non-conforming sexual orientation, gender identity and gender expression resulted in a greater frequency of violence against LBT people in Asia. This association was especially noticeable in countries where religion was used to justify and intensify intolerance.
7. State institutions, including medical, mental health and State-funded women’s shelter networks in Asia, were insensitive and not trained to assist LBT victims of violence. In general, service providing agencies responded poorly to LBT individuals who face violence.

CONCEPTUAL BACKGROUND

Using the Rights Lens

When the State fails to hold the perpetrators accountable, impunity not only intensifies the subordination and powerlessness of the targets of violence, but also sends a message to society that male violence against women is both acceptable and inevitable. As a result, patterns of violent behavior are normalized.

– Kofi Annan, United Nations Secretary General¹²

While civil society solidarity between LBT groups and non-LBT groups strengthens overall women's rights and human rights advocacy – and can embolden LBT activism and increase allies – it is up to the State as the primary duty-bearer¹³ to enact good laws (e.g., anti-rape laws, anti sexual harassment laws, anti-discrimination laws) and amend or remove bad laws (e.g., sodomy laws, morality laws). The State must send a message that violence on the basis of sexual orientation, gender identity and gender expression will not be tolerated and is both criminal and punishable under State law.

This research starts from the assumption that as the primary duty-bearer for remedying human rights violations, the State has a responsibility to combat all violence that is directed at LBT persons. If there is an inadequate State response to non-State violence – or no intervention

at all – the State is essentially condoning the violence. The research is also predicated on the understanding that States are accountable to standards under international human rights law. International human rights law stipulates the following:

1. The State is responsible for ensuring an environment that is supportive of all and not only some women's rights.
2. The State must exercise due diligence in preventing violence and promoting the safety and dignity of all marginalized and vulnerable populations – ethnic minorities, people with disabilities, indigenous communities, religious minorities, including sexual minorities and non-conforming gender minorities.
3. The State must comply with international treaties that it ratifies, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), and international agreements it makes (e.g., the Beijing Platform for Action)¹⁴ in order to remove obstacles from both the public and private spheres that prevent all women (female bodied, gender variant, lesbian, bisexual) and female-to-male transgender men from enjoying violence-free lives.

Non-State violence is a significant problem for LBT people, and the State's reluctance to intervene in non-State violence can be read as privatization of violence, where violence against LBT people by non-State actors and private individuals is treated as understandable, normal, justifiable, even inevitable,¹⁵ and this "inevitability" is a justification

12 United Nations, *In-depth study on all forms of violence against women: Report of the Secretary-General*, A/61/122/Add.1 (July 6, 2006), 76, available from <http://www.un.org/womenwatch/daw/vaw/v-sg-study.htm>.

13 Much has been written about human rights as a governing body's duty versus the reality of good governance extending to all members of society. For instance, see Jack Donnelly, *Universal Human Rights: In Theory & Practice*, 2nd Edition, (Ithaca: Cornell University Press, 2003).

14 United Nations, *Beijing Platform for Action* (September 15, 1995), available from <http://www.un.org/womenwatch/daw/beijing/platform/>.

15 In comments for International Women's Day, March 8, 2013, United Nations Secretary General Ban Ki-moon said that violence against women is "not inevitable" and that "mindsets can change." See "Violence against Women is not inevitable: Ban Ki-moon," *United Nations Radio*, March 8, 2013, <http://>

for the State sidestepping its due diligence to LBT people. Due diligence refers to responsibilities of the State to prevent, investigate and punish violence by responding to all acts of violence with measures that include: public education about violence, civil remedies for violence, providing assistance like emergency shelter and counseling services, gender sensitive training for police and judges, as well as documenting and publicly disseminating reports on violence.¹⁶ In effect, due diligence to stop violence against women and against marginalized and vulnerable populations is required to advance women's equality, and to promote and protect the rights of marginalized populations including LBT people.

Violence against LBT people by non-State actors and private individuals is treated as understandable, normal, justifiable, even inevitable, and this "inevitability" is a justification for the State sidestepping its due diligence to LBT people.

In many Asian countries, human rights are legitimized and delegitimized in accordance with the State's acceptance or rejection of certain rights (e.g. sexual rights, rights related to bodily autonomy) and certain segments of society (e.g. LGBT people). Often, there is a corresponding recognition or neglect of particular rights and segments of the vulnerable population by mainstream human rights movements in that country. The groups undertaking this research project were aware of the tendency of many States to favor the "traditional" approach to human rights that hierarchizes and compartmentalizes human rights, women's rights, and reproductive rights while rejecting sexual rights. They also understood the importance of relying on internationally recognized

definitions of human rights,¹⁷ not only for civil society advocacy and education purposes but also to hold the State accountable to carrying out due diligence in the treaty agreements it has signed.

Sexual Rights and Rights to Bodily Autonomy are Human Rights

Given the complicated silences behind the cross-cutting violence that LBT people experience, and the multiple stakeholders responsible for the violence – and impunity shrouding the violence – IGLHRC recognized the need to adopt a research methodology upholding sexual rights and rights to bodily autonomy as human rights.

Taking this approach addressed the specific needs of the project:

1. The traditional human rights framework tends to focus on violence by State perpetrators and does not give equal weight to non-State perpetrators, such as family and private individuals. This research does.
2. The traditional human rights framework centers on violation and victimization (i.e., the voices of people who have been violated and not their experiences of coping and survival). This research looks at victimization and resiliency.
3. The traditional human rights framework prioritizes State culpability. This research does not limit culpability to the State but also looks at the roles and responsibilities of multiple stakeholders, including the role of the non-State sector in stopping violence on the basis of sexual orientation, gender identity and gender expression.
4. In line with the current status and scope of human rights analysis on subjective suffering and non-physical forms of ill-treatment, this

www.unmultimedia.org/radio/english/2013/03/violence-against-women-is-not-inevitable-ban-ki-moon/.

¹⁶ See for example: United Nations, Declaration on the Elimination of Violence against Women, A/RES/48/104 (December 20, 1993), available from: <http://www.un.org/documents/ga/res/48/a48r104.htm>.

¹⁷ See "Sexual Rights: an IPPF declaration," *International Planned Parenthood Federation*, 2008, <http://www.ippfwhr.org/sites/default/files/files/SexualRightsIPPFdeclaration.pdf>.

research looks at the continuum of violence including non-physical yet equally harmful types of violence experienced by LBT people.

5. While the human rights framework is clear that all human rights are interdependent, indivisible, and universal, much human rights documentation does not adequately integrate an intersectional analysis.¹⁸ This research examines the intersectionality of discrimination and violence that LBT people experienced, where different prohibited grounds for violence and discrimination (e.g., ethnicity, sex, religion) multiplied the vulnerabilities for violence, created specific types of violence, altered the settings for violence, and exacerbated the egregiousness of violence on the basis of sexual orientation, gender identity and gender expression.

Challenging Privatization of Violence

In the five countries where the research was carried out, governments relied on the family to regulate morals through compliance with the law while religious institutions expected the family to enforce heteronormative concepts of family structure, marriage, women's role in society, motherhood, fatherhood, femininity, masculinity and sexuality.¹⁹ Non-compliance with such laws and norms had serious consequences, including

18 Feminists and advocates of sexual rights (within the broader human rights framework) stress that civil, political, economic, social and cultural rights are all interdependent and indivisible. For instance, denying rights on grounds of sexual orientation and gender identity takes away people's ability to enjoy the other rights recognized by the State.

19 Heteronormativity "valorizes heterosexuality but particularly a gender-conforming understanding of heterosexuality, which allocates more power to male leadership in public and private life, rewarding females primarily for reproduction and submission" ... teaching women and girls from an early age that women must marry men, fulfill their husbands' sexual needs, bear children, be responsible for house work and childcare, and "express a particular model of femininity." See "Equal and Indivisible: Crafting Inclusive Shadow Reports for CEDAW," IGLHRC, 2009, <http://www.iglhrc.org/content/equal-and-indivisible-crafting-inclusive-shadow-reports-cedaw>.

non-State violence directed at individuals with non-conforming sexual orientation, gender identity and gender expression.

Sexuality and gender non-conformity are frequently wedge issues²⁰ in many women's movements around the world, where sexual rights and bodily autonomy tend to be subsumed under a heteronormative agenda that narrowly focuses on reproductive rights and maternal health. The rights to sexual autonomy and bodily integrity are often sidelined, for example: when women's groups push for gender mainstreaming but are silent on lesbian and bisexual women's issues; or when advocates for marginalized and vulnerable populations are reluctant to mention sexual orientation and gender identity even when they are discussing sexuality. These lapses often come in response to religious conservatives vilifying women's sexual rights defenders and accusing these advocates of promoting promiscuity and deviant sexual behaviors. Consequently, the rights of lesbians, bisexual women – and disproportionately those of transgender individuals – are bypassed by mainstream (heterosexual and cisgender/gender conforming) women's non-governmental organizations (NGOs). For some it is a question of ignorance; they simply do not know (and choose not to learn) about the human rights issues that affect women and trans persons of diverse sexualities and gender expressions. For others, there is a conscious decision to avoid coming under religious attack and/or avoid being threatened with defunding and government surveillance and harassment. Worse, many mainstream organizations focusing on women's rights, women's health, and human rights in general, will distance themselves publicly from LBT groups. The effect of this distancing is the exclusion of violence against LBT persons from national and international human rights monitoring and reporting, affecting not only their in-country advocacy but also the accuracy of their reporting to UN treaty-monitoring bodies such as the Committee on the Elimination of Discrimination Against Women.²¹

20 Cynthia Rothschild, "Written Out: How Sexuality Is Used To Attack Women's Organizing," IGLHRC, 2005.

21 Anti-gay Christian fundamentalists hijack Singapore women's

This research therefore takes into consideration the close correlation between general gender inequality and the additional oppression of LBT individuals. The rights of LBT people are usually more repressed and even more seriously violated in country contexts where heterosexual women and cisgender women (self-identified gender conforms to their biological sex assigned at birth) suffer routine human rights violations.

When Discrimination is Violence

The obligation to protect requires that State parties protect women from discrimination by private actors and take steps directly aimed at eliminating customary and all other practices that perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women.... State parties have an obligation not to cause discrimination against women through acts or omissions; they are further required to react actively against discrimination against women, regardless of whether such acts or omissions are perpetrated by the State or by private actors.... State parties have an obligation to take steps to modify or abolish existing laws, regulations, customs and practices, which constitute discrimination against women. Certain groups

group," *Fridae*, April 10, 2009, <http://www.fridae.asia/newsfeatures/2009/04/10/2257.anti-gay-christian-fundamentalists-hijack-singapore-womens-group>. In Singapore, a conservative Christian women's group ousted the leadership of AWARE, the country's largest women's organization following the screening of a Taiwanese film featuring lesbians. The women's organization had previously refused repeated requests by its lesbian membership to include lesbian issues into its shadow reports to CEDAW. After the religious backlash, AWARE fought back and regained its leadership but became even more resistant to being "associated" with lesbian issues. In Indonesia, several LBT supportive women's organizations, including the National Women's Commission of Indonesia refused to include LBT issues in their written and verbal reports to CEDAW for fear that Muslim conservatives would accuse them of advocating same sex marriage. See Grace Poore, "Indonesian Women Exposed to Backlash," *WomensENews*, August 21, 2012, <http://www.iglhr.org/press-room/iglhr-news/indonesian-lbt-women-exposed-backlash>.

of women, including women deprived of their liberty, refugees, asylum-seeking and migrant women, stateless women, lesbian women, disabled women, women victims of trafficking, widows and elderly women are particularly vulnerable to discrimination through civil and penal laws, regulations, and customary laws and practices.

– CEDAW General Recommendation 28 on the core obligation of States.²²

Not all discrimination can be labeled violence although discriminatory laws and policies often motivate violent practices. For instance, discrimination can lead to physical and verbal violence, and may be used to rationalize violence. Conversely, violence motivated by deviation from gendered norms is, in itself, a form of discrimination.

In keeping with international human rights law, the research recognizes that freedom from violence depends on the promotion and protection of other rights (right to freedom of expression, right to health, right to employment, right to adequate housing, right to form a family, right to equal protection of the law – see the *Yogyakarta Principles*).²³ The research also acknowledges that violence against LBT individuals is not only motivated by rejection of sexual orientation, gender identity and gender expression, but in some instances rejection of other identity markers (e.g., race, ethnicity, class, economic status, religion), which increases the chances that LBT people will face violence.

In our research, we distinguish between discrimination that has violent expression, violence that is motivated by stigma and discrimination, and violence that is not motivated by discrimination. We look at discrimination and disempowerment of LBT people and how this marginalization is experienced as violence, recognizing the relationship between

22 United Nations, *CEDAW/C/GC/28* (December 16, 2010), available from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement>.

23 "The Yogyakarta Principles," *Yogyakarta Principles.org*, March 2007, http://www.yogyakartaprinciples.org/principles_en.htm.

discrimination and violence. The following criteria served as guidelines for the researchers in identifying when to include instances of discrimination in this research on violence:

- Discriminatory country conditions that cause physical or psychological harm, or increase the severity or frequency of physical violence (e.g., vigilante attacks).
- Discrimination that justifies and contributes to particular types of violence on the basis of non-conforming sexual orientation, gender identity and gender expression (e.g., rape to “correct” or “convert” lesbians).
- Discriminatory State actions that encourage certain types of violators, such as religious officers, or perpetrator impunity, such as in mob attack or gang rape.
- Discriminatory country conditions that become the justification for the State’s inaction when violence occurs, and/or when it results in institutional mistreatment of LBT victims of violence.

Politics of Naming Violence

Terms such as homophobia and transphobia as motivators for violence were avoided as they are imprecise. The research questions and interviewers strived to be specific by listing types of violence and naming reasons for violence rather than assuming common agreement, understanding or even acceptance of such terms.

Researchers accepted and applied any and all terminology for sexual orientation and gender identity used in the research countries. Interview respondents could self-identify their sexual orientation and gender identity, which included rejecting Western and/or English-language categories for non-conforming sexual orientation, gender identity and gender expression. However, the politics of language goes beyond terminology,²⁴

24 A glossary of terminology is included in each country chapter of this report.

as noted by Sri Lankan feminist thinker, Jayanthi Kuru-Utumpala, who says that categorizing the term “lesbian” as a Western identity “allows the government and non-governmental institutions to dismiss the need for protective legislation for [LGBT] people on the basis that such sexual behavior is a bad influence from the West.” This justification for inaction becomes another way of invisibilizing women’s non-conforming sexual orientation, gender identity or gender expression.²⁵

LBT people struggled with naming family violence as violence and family members as perpetrators.

The report includes the violence that LBT people experienced even if individuals did not name the experience as violence. In many cases, individuals internalized a narrow understanding of violence (e.g., that non-physical violence is not violence), were reluctant to name violent actions by family as violence, or perceived the violence they suffered as justified because they accepted the reasons given by the perpetrator. We also include violence that LBT individuals did not attribute to sexual orientation, gender identity and gender expression, for example, when an interviewee said, “I wasn’t out so the violence could not have been due to my relationship with other girls.” When analyzing these experiences as violence, researchers took into consideration the general human rights situation in the country and how it affected LBT people’s lives. In other words, researchers integrated the sentiment that LBT rights and experiences did not exist in a vacuum. They looked at how country or community contexts contributed to misconceptions about violence against individuals with non-conforming sexual orientation, gender identity and gender expression.

So-called “private” violence had multiple meanings and evoked varied responses from LBT people in

25 Jayanthi Kuru-Utumpala, “Butching It Up: An Analysis of Same Sex Female Masculinity in Sri Lanka,” *Culture, Health & Sexuality*, July 18, 2013, <http://dx.doi.org/10.1080/13691058.2013.807520>.

the research. First, it was defined by the fact that it occurred in the private sphere of the home and family. Second, when the perpetrator was a family member or someone intimately linked to the victims, many experienced the violence as a private matter, which implied an imperative to avoid public exposure of the family or relationship. Third, many victims experienced a keen need to keep reasons for the violence (for being gay or transgender) private, which often translated into a need to ensure that the violence itself went unnoticed by the State, co-workers, employers, neighbors and friends. For many LBT people, there was also the fear of being subjected by the media to unwanted exposure of their identities, such as being “outed” (having one’s sexual orientation or gender identity revealed without permission or inadvertently). Fourth, when victims perceived of violence as a “personal issue,” they also saw the ability to cope with this violence as a personal responsibility and not something for which they were entitled to institutional assistance.

They rationalized the violence they experienced as somehow justified for bringing disharmony and inconvenience to their families due to the shame associated with having an LBT family member.

In many countries, women’s right to privacy was routinely ignored or violated, particularly when it came to issues related to their sexuality or reproduction. In such circumstances, the notion of “private” violence had even greater implications, as LBT people were caught in a spiral of mutually reinforcing notions that because the violence was private it was an individual’s personal responsibility to deal with violence, and not dealing with it became the focus rather than the perpetrator’s actions. All of these factors have multiple implications for intervention and prevention efforts by the State and by NGOs; meanings surrounding private violence tend to discount the impact of State neglect and the importance of State accountability to those it governs and commitments to national and international human rights standards.

Skewed reporting in the five research countries contributed to the general misunderstanding about (and discounting of) the gravity and prevalence of violence that LBT people experienced, the impact of this violence, as well as the virtual impossibility of seeking assistance to deal with violence. For instance, LBT people and the violence they experienced were often not even a footnote in most NGO reports on violence against women. LBT people were excluded in national action plans to end violence against women and missing from national campaigns such as Sixteen Days of Activism to end violence against women.²⁶ At the same time, most reports by LGBT organizations on violence based on sexual orientation and gender identity did not include violence perpetrated by family members, intimate partners, and employers, since preference was given to violence by State perpetrators, violence resulting in deaths, and violence outside the home. Even human rights reports that had started mentioning violations against LGBT people focused less on lesbians, bisexual women and transmen than on gay men and transwomen – and did not take on violence in the private realm.

It was not surprising that even members of ministries of women’s affairs, national women’s commissions, and national human rights institutions who were conscious of general discrimination against LGBT populations were unaware that violence experienced by LBT people was systemic, frequent, and severely under-reported.²⁷

26 A global campaign launched in 1991 by the Center for Women’s Global Leadership. See “16 Days of Activism Against Gender Violence Campaign,” Rutgers School of Arts and Sciences website, <http://16dayscwgl.rutgers.edu/about/activist-origins-of-the-campaign>.

27 In Malaysia, a former human rights commissioner was skeptical about the level of violence against LGBT people because he said the Commission hardly received complaints, which led him to conclude that the situation was not as bad as activists claimed. He himself was publicly opposed to LGBT people having any rights. (Author’s conversation with Suhakam Commissioner, Khaled Ibrahim on May 5, 2009 in Yogyakarta, Indonesia during a workshop convened by the Asia Pacific Forum.) A Philippines human rights commissioner said the commission could not commit resources to investigating violence against LBT people without receiving prevalence data. (Angie Umbac, Skype research coordinators meeting with IGLHRC,

The reality, however, as Rashida Manjoo, Special Rapporteur on Violence Against Women, explains is that “[v]iolence motivated by hatred and prejudice based on sexual orientation and gender identity is a daily reality for many. It is ‘characterized’ by levels of serious physical violence, that in some cases exceed those present in other types of hate crimes.”²⁸

VIOLENCE AGAINST “WOMEN” IS A CONTENTIOUS TOPIC

Violence against women is any act of gender-based violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, sexual or mental harm and suffering, threats of such acts, coercions, and other deprivations of liberty... [that] impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions....

— CEDAW Committee, General Recommendation 19²⁹

Feminist research on violence against women has established that although different forms of violence do not fall into “discrete analytic categories,”³⁰ there is an interlinked spectrum of violent behaviors that

June 15, 2011). In Thailand, which is not one of the research countries in this study, a human rights commissioner dismissed reports that butch lesbians and toms were being targeted for hate killings. Despite news reports of nearly fifteen lesbian fatalities, he claimed there was no pattern to the crimes despite police investigations that showed the killers were “jealous” boyfriends or men who felt rebuffed by women who chose to be in a same sex relationship than with men. See “Letter to Thai Officials: Killings of Lesbian Women and Transgender People in Thailand,” IGLHRC, March 22, 2012, <http://www.iglhrc.org/content/letter-thai-officials-killings-lesbian-women-and-transgender-people-thailand>.

28 United Nations, *Report Of The Special Rapporteur On Violence Against Women, Its Causes and Consequences*, Rashida Manjoo, A/HRC/20/16 (May 23, 2012)

29 CEDAW Committee, General Recommendation 19 on Violence Against Women, background general comments 6 & 7. (1992).

30 Liz Kelly, *Surviving Sexual Violence* (Cambridge: Polity, 1989).

reinforce each other and reproduce power imbalances. Feminist theory has also been crucial to the identification of perpetrators and to the interrogation of not only our understanding of what constitutes violence, but also of the silence surrounding particular forms of violence against women. For instance, feminist activism and research³¹ on the prevalence, characteristics and impact of intimate partner violence forced the public’s acknowledgment of intimate partner violence as a social problem.

Advocates for marginalized and vulnerable populations are reluctant to mention sexual orientation and gender identity even when they are discussing sexuality.

The phenomenon of “corrective” rape³² by family and community members has been recognized as a human rights violation on the basis of sexual orientation, gender identity and gender expression. That said, transgender activists and scholars have challenged the conflation of issues relating to sexual orientation, gender identity and gender expression, such as the use of the term “LBT women” when referring to lesbians, bisexual women and transgender people. They also rightly point out that **the CEDAW Convention is silent on discrimination and violence on the basis of gender identity and gender expression.**

Naming and describing violence has powerful political as well as practical consequences. Across all regions, feminists and women’s groups have observed that when violence against women is delinked from social norms and societal attitudes, legal change falters; State interventions and preven-

31 Many feminists in Asia and elsewhere have excluded transgender men and women in their analysis, scholarship, and activism.

32 “Corrective” rape is sexual assault perpetrated by men against women with non-conforming sexual orientation or gender expression, to “cure” or “correct” the victim’s actual or perceived lesbianism or transgenderism, and is based on the attacker’s assumption that sexual intercourse with a man will revert a lesbian to heterosexuality and cisgender expression. Perpetrators can be strangers or known to the victim/survivor; they can be members of the victim/survivor’s social network or family.

tion measures are not successful. As noted earlier, women's safety and security are inextricably tied to women's equality. For example, when the country conditions are hostile to women and girls, and when States are neglectful of women's lives, all women are at risk, including: lesbians, bisexual women, gender non-conforming women (butch lesbians, women who dress in masculine attire, male to female transgender women), and as this research shows, female-to-male transgender men.

When the State or religious and community leaders contend that certain customary practices do not amount to violence, it becomes controversial to name these practices as violence, such as husband's "entitlement" to sex, the discriminatory treatment of daughters by parents, or punishing women for not conforming to societal expectations regarding female morality and respectability. In this context, it is challenging to draw attention to invisible, unacknowledged, condoned or commonly accepted forms of violence (e.g., marital rape, intimate partner violence and forced marriage). Asia is not unique in this regard. Across all regions, laws, culture, religion, patriotism, and nationalism are subverted and used to regulate sexuality and gender appropriate behavior. Suzanne Pharr, author of *Homophobia: A Weapon of Sexism*, notes, "[p]art of the way sexism stays in place is the societal promise of survival, false and unfulfilled as it is, that women will not suffer violence if we attach ourselves to a man to protect us. A woman without a man is told she is vulnerable to violence, and worse, that there is something wrong with her."³³

Ideological Roots of Violence

This research sets out to document structural-cultural violence against women and people with non-conforming sexual orientation, gender identity and gender expression. In other words, it aims to show that the **violence committed against LBT people by individual, institutional and State**

perpetrators is not random but has ideological roots. Furthermore, it shows that certain deeply held beliefs and ideologies are deployed to validate and encourage this violence. On the one hand, there are social norms premised on heterosexuality and on the existence of two genders only – men and women – with gender identities that conform to the sex they were assigned at birth. These norms serve as the only acceptable standards of identity, behaviors and relationships. On the other hand, there are prevailing beliefs, sometimes justified with reference to religion, that LBT people are "unnatural," "immoral," or against a specific religion. These misconceptions support and serve as the foundation for institutional and individual levels of violence against people who defy social and religious norms regarding expressions of sexuality and gender.

The risk for physical, verbal, and even sexual violence was greater when LBT people's sexual orientation, gender identity and gender expression were more visible.

In Asia and elsewhere, the added layer of vulnerability for people with non-conforming gender expression is that they are targeted for defying the assumption of heterosexuality and gender norms (through their clothing, hair, behavior, speech, and who they partner with). For instance, women who appear or are perceived as "typically masculine," men who appear or are perceived to be "typically feminine," or transgender (male-to-female) and transgender (female-to-male) individuals become targets for violence.³⁴

No doubt, gay and bisexual men – like lesbians, bisexual women and people with non-conforming gender identity and gender expression – are also at risk for homophobic violence and discrimination. However, LBT people contend with the normalization and minimization of violence against them because of the status accorded to all women in Asian societies and elsewhere. Women's lower social status

³³ Suzanne Pharr, *Homophobia A Weapon Of Sexism* (Revised) (Berkeley: Chardon Press, 1997).

³⁴ These are by no means exhaustive distinctions among women or between women and gender non-conforming individuals.

contributes to the invisibility of and lack of attention paid to violence against lesbian, bisexual and transgender women. To cite Suzanne Pharr, “homophobia works effectively as a weapon of sexism because it is joined with a powerful arm, heterosexism. Heterosexism creates the climate for homophobia with its assumption that the world is and must be heterosexual.”³⁵ This analysis applies also to transphobia. Often effeminate men, masculine women, transgender women and transgender men are particularly vulnerable to violence because, like lesbians and bisexual women, they challenge prevailing (patriarchal) notions of masculinity and femininity.

The research undertaken for this report by LBT activists in Japan, Malaysia, Pakistan, Philippines and Sri Lanka clearly shows that heterosexism and homophobia, along with the assumption that there are only two genders (gender binary), work together “to enforce compulsory heterosexuality.” The State, religious institutions, and the family perpetuate compulsory heterosexuality; but feminists across Asia and elsewhere have long pointed out that **the family in particular is one of the most powerful tools of patriarchy.**

Consequently, even if anti-homosexuality legislation³⁶ does not explicitly include lesbianism, lesbians and bisexual women are still vulnerable. This vulnerability is linked, firstly, to the deeply entrenched and uncontested role that Asian families play in policing women’s sexualities. Secondly, it is linked to the failure of nearly all Asian governments to curb family violence in order to advance the human rights of women, including: non-discrimination, safety from violence, sexual autonomy, and bodily integrity, including the rights to refuse to marry, to choose with whom they partner, and whether or when to have children.

Asian lesbian and bisexual women’s access to public spaces is also influenced by the level of gender-based violence that women in general contend with in the public sphere, and by pervasive societal attitudes about female victims of rape and sexual assault. Consequently, in places where women in general are expected to remain exclusively or predominantly in private spaces and where they are shamed as responsible for sexual assault if they report rape or other attacks, LBT people tend not to report the violence they face. Stigma and mistreatment by the police are barriers to LBT people reporting violence based on sexual orientation or gender expression. The general narrow understanding of what constitutes rape influences how the State and public respond to sexual violence against transgender individuals. As noted in this research by LBT rape victims, rapes were mistreated during investigation or not investigated at all, only adding to fears of reporting and the risk of additional victimization.

That said, violence against transgender women who are sex workers is disproportionately and sensationally reported in the media, reinforcing the idea that the violence transgender women face is solely due to the illegality of their work and/or that all transgender women are sex workers. On the other hand, violence against transgender men remains under-reported, under-investigated and under-documented.³⁷

35 *Homophobia A Weapon Of Sexism* (Revised) (Berkeley: Chardon Press, 1997).

36 For instance, British colonial laws that criminalize anal sex, oral sex, under the rubric of “crimes against nature.”

37 Although the general invisibility of and silences around transgender men’s issues is a recognized concern among Asian lesbian groups that focus on gender-based violence, the concern seldom translates into concrete steps to address these gaps. The invisibility of transmen is also noticed in a 2012 review of HIV research in the Asia Pacific region, which repeatedly mentions the lack of studies or research data on transmen. See United Nations Development Programme, *Lost In Transition: Transgender People, HIV Vulnerability in the Asia Pacific Region* (2013).

ANALYSIS OF REGIONAL FINDINGS

1 Laws prohibiting violence against women in Asia are discriminatory and do not extend protections to women and transgender people with non-conforming sexual orientation, gender identity and gender expression.

The language of anti-domestic violence, anti-rape, and anti-sexual harassment laws in the research countries was exclusionary at the time of research and continues to be so in 2014. Malaysia and Pakistan have no domestic violence protections for LBT people in same-sex relationships. In countries like Sri Lanka, where the domestic violence law covers de facto couples, LBT people were still unable to access these laws for redress³⁸ because of two other laws: the existing anti-sodomy law, which criminalizes lesbianism; and the impersonation law, which makes it a crime to “deceive the public” by impersonating a person one is not, and which can be invoked against people with non-conforming gender expression. Both laws carry severe penalties, thus depriving LBT people of even those few options for protection and safety that theoretically are available to heterosexual cisgender women. On the other hand, in the Philippines, where adult consensual same-sex relations are not criminalized and there is an inclusive domestic violence law, LBT individuals reported poor implementation of the law, especially at police stations, domestic violence shelters, and domestic violence desks at hospitals. According to LBT anti-violence activists, these sectors “have been slow to accept the law” and inadequately (if at all) apply domestic violence protocols for LBT victims of domestic violence.

Marital rape is not criminalized in Sri Lanka, Malaysia, Pakistan, Japan or Philippines. Rape

38 In fact, no lesbians have tested Sri Lanka’s domestic violence law in court.

is only legally recognized if a couple is judicially separated or the marriage is considered *void ab initio* (void under the law – for instance, because the woman is under the marital age). While some of the lesbians in the research who were raped in forced heterosexual marriages could have sought redress under this law, sexual violence created shame and demanded silence to avoid humiliation and other recriminations. In the situations where lesbians were pressured into marriage, there was little or no parental support for lesbian or gender-variant daughters.

Sexual harassment policies in Japan assume that sexual harassment only applies to “ordinary,” (i.e., cisgender) women. Transgender people who had been sexually harassed in the workplace said they found it difficult to report the violence and have it taken seriously by authorities. It was difficult for individuals to even name the violence when it occurred because policies systematically overlooked employees who are not cisgender, thus making it onerous to even try to hold perpetrators accountable. In addition, the Japanese Criminal Code defines rape as non-consensual sexual intercourse with a girl/woman who is thirteen and above.³⁹ This national law has a less rigorous standard than the local ordinances enacted by Japanese municipalities that criminalize non-consensual sex with minors (under eighteen) although the ordinances do not call sexual violence against this age group rape.⁴⁰

Only the Philippines had expanded its definition of rape from the usual limited definition of penile-vaginal penetration to include penetration with “any object or instrument.” Japan, Malaysia, Pakistan and Sri Lanka still used the limited definition.

Labor law protections were generally inaccessible to LBT people because sexual orientation, gender identity and gender expression are not recognized grounds for discrimination and harassment.

39 The age specification is likely in reference to non-consensual sex outside the legal age of marriage – sixteen for women in Japan. It is eighteen for men.

40 Clarification provided by Japan research coordinator, Azusa Yamashita via email communication on November 18, 2013.

Further, discrimination and violence were sometimes justified or overlooked because of the victim-survivor's economic status, age, or other status interlinked with non-conforming sexuality and/or gender. For instance, a non-Muslim⁴¹ transgender woman in Malaysia recalled that her employers slapped, beat her up, and threw hot water at her because of her gender expression. She was a teenager at the time, from a poor family. Given her family's low economic status, her age, and her non-conforming gender, she instinctively knew that she could not report the violence to police or other authorities. In this case, a combination of factors was the basis for violence and also made reporting difficult.

LBT victims of violence are disadvantaged even before they can seek redress for violence.

While there was no national legislation prohibiting violence or discrimination against sexual minorities in any of the countries involved in this research, there was an arsenal of laws used by the authorities to persecute LBT people. One category of laws criminalized behavior, which is usually imputed exclusively to LGBT people (e.g., Penal Code provisions in Malaysia, Pakistan and Sri Lanka that penalize anal sex and oral sex). While these laws in theory applied to everyone, regardless of sexual orientation, in their implementation they targeted same-sex relations (including sex between women), even if there was no specific evidence that the prohibited act had taken place at all. In other words, although the penal code prohibits a specific act, it was a specific identity that was ultimately punished.

Laws ostensibly meant to police and control public spaces, such as vagrancy, loitering, and public order laws, were used in four of the five research countries (Japan was the exception) to target people because of their appearance even if they were not engaged

in the criminalized behavior. Police and other law officials made reference to these laws when they targeted transgender women who happened to be talking on the street or eating at an outside food stall, or lesbian couples in public spaces (where one partner is clearly butch). A third category of laws was used to punish specific LBT behaviors (e.g., Sri Lanka's impersonation law was applied to trans people for "cheating the public"), Philippines' grave scandal law was applied to lesbians and trans people in particular (for "offending decency and good customs"), and Malaysia's anti-cross dressing law was applied to trans persons. Finally, there were provisions in sharia (Islamic) law that specifically prohibited and punished male homosexuality and lesbianism (in Pakistan and Malaysia) and transgenderism (in Malaysia).⁴²

In fact, many parts of the criminal law were blatantly misused against LBT people. In the Philippines, laws to prevent kidnapping, illegal detention and "crimes against liberty" were used against butch lesbians and transmen. Families who objected to same-sex relationships filed false complaints of abduction to forcefully break up couples that had eloped. In Pakistan, the research team argued that lesbians and bisexual women were vulnerable to family violence and random stranger violence⁴³ if their identities were discovered.⁴⁴ They pointed to the Obscenity Laws 290

42 The Pakistan Supreme Court ruled in favor of the rights of transgender women who are known as hijras and khwajasaras. The 2009 ruling granted State welfare benefits to transwomen and called for the legal creation of a third gender category. Basim Usmani, "Pakistan To Register Third Sex Hijras," *The Guardian*, July 18, 2009, <http://www.guardian.co.uk/commentisfree/2009/jul/18/pakistan-transgender-hijra-third-sex>.

43 This fear was exacerbated when a progressive governor of Punjab was assassinated by his bodyguard for criticizing the Blasphemy Law. The killer was championed by religious groups. "Punjab Governor Salman Taseer Assassinated In Islamabad," *BBC*, January 4, 2011, <http://www.bbc.co.uk/news/world-south-asia-12111831>.

44 IGLHRC has received confidential email and telephone complaints from individuals inside Pakistan (unrelated to this research) who have been threatened with violence by religious groups and neighbors, based on the "suspicion" that they are gay and/or because the confidential location where they regularly

41 In this case, this individual did not have to contend with being penalized under sharia law or being reported to religious authorities.

and 294, which penalize “obscene acts” and to the Blasphemy Law,⁴⁵ which punishes anyone from Pakistan who defames Islam and Prophet Muhammad or questions this law. The Pakistan researchers noted that there was general fear in the LBT community of being targeted by these laws, borne out by strangers, neighbors, or university students invoking their right to defend Islam when perpetrating violence against gay men, lesbians and bisexuals.

2 Emotional violence was the most commonly reported form of violence for LBT people in Asia.

LBT people interviewed for this research identified emotional violence as the most prevalent form of violence they experienced. The emotional violence occurred across domains – outside the home and in the home, by State and non-State perpetrators. For instance, State actors and families both used references to religion to condemn and punish non-conformity. According to respondents, emotional violence intensified over time and usually preceded physical violence. For instance, one third of LBT interviewees in Malaysia who experienced emotional violence reported that the verbal hostilities and pressure to conform from family eventually escalated to physical violence, often over a period of years. As noted by sociologist Steven Onken, a single violent incident or situation can manifest several mutually reinforcing aspects of violence, meaning that categorizations of violence are not exclusive but are overlapping.⁴⁶ Many LBT people in this research experienced individual acts of violence as part of a campaign of violence; in their experience, acts of violence usually were not a one-off occurrence.

meet was compromised. These reports are on file at IGLHRC.

45 “The Kafkaesque Reality of Pakistan’s Blasphemy Laws,” *New Statesman*, February 28, 2013, <http://www.newstatesman.com/politics/2013/02/kafkaesque-reality-pakistans-blasphemy-laws>.

46 Lacey M. Sloan and Nora Gustavsson (eds.), “*Conceptualizing Violence Against Gay, Lesbian, Bisexual, Intersexual and Transgendered People*” in *Violence and Social Injustice Against Lesbian, Gay and Bisexual People* (New York: Haworth Press, 1998).

Types of emotional violence against LBT people in the public sphere included social ostracism, stigmatization, verbal denigration, religious condemnation, posting homophobic and transphobic insults online, threatening to publicly expose the sexual orientation and gender identity of particular individuals, threatening to cause bodily harm, threats of rape, and publicly ‘outing’ or disclosing individuals’ sexual orientation and gender identity. The disclosure of sexual orientation and gender identity generally resulted in additional exclusion or violence, including loss of employment, school expulsion, and punishment by authorities. Perpetrators of these types of violence included employees of State institutions, strangers/members of the public, religious officers, employers, co-workers, school peers, acquaintances, landlords and neighbors.

Several LBT interviewees testified that they had been subject to sexual violence by family members from childhood.

Emotional violence in the private sphere was perpetrated by family members or partners of LBT individuals, and included verbal hostilities, restrictions on socializing (such as imposing curfews and house/room confinement), gender norm enforcement (forced to dress and behave according to social norms), or mistreatment “simply for being women.” Other types of emotional violence involved severing of family ties, public shaming, privacy invasions, economic retaliation such as withdrawing financial support, eviction, prolonged silent treatment, and treating individuals as persona non grata (e.g., consistently ignoring a person as if they were not in the room and speaking about them in the third person). Families also forced individuals to end intimate relationships, and/or forced individuals into mental health therapy or religious counseling, the coercive aspects of which amounted to emotional violence.

3 Family was the primary perpetrator of violence against LBT people in Asia.

LBT people in this research pointed to family violence as the primary source of violence in their lives. Family perpetrators inflicted physical violence and sexual violence (discussed below under sub-section 4) as well as emotional violence (discussed earlier). “Dominant” male members of the family were reported to be the main perpetrators of physical and sexual violence, including child sexual violence (discussed later in this chapter).

Physical violence by family members included beating, punching, slapping, use of objects as weapons, and forced hair cutting or head shaving. The perpetrators justified this form of violence as “corrective” violence to punish people for their non-conforming sexual orientation, gender identity and gender expression as this non-conformity was viewed as disobeying cultural expectations, defying parental authority, insulting religion, or bringing shame on the family.

Typically, families targeted “tomboy” girls, lesbians with very short hair, girls “liking” other girls, and transgender girls for their “feminine tendencies.” These “feminine tendencies” included wearing women’s clothing, or as noted in the Pakistan and Malaysia research, taking on stereotypical women’s roles in the family, such as cooking and cleaning. The age of victim did not appear to influence violent behaviors. For example, the father of a transgender woman in Malaysia beat her from the time she was a toddler because “she looked like a girl” and asked other family members to mistreat her as well because of her gender expression.

The weight given to family violence surprised all the research teams considering the level of violence also reported by the interviewees in other contexts, including: from the State, through government officials such as police, religious officers, military officers, members of state-controlled media, state agencies (e.g. passport control and identity card officers) and healthcare personnel; or outside the home, such as on the streets, schools and workplace.

SOME EXPLANATIONS FOR CENTRALITY OF FAMILY VIOLENCE

Several factors could explain why family violence was so deeply felt by the interviewees. In Asia, the family is the most powerful enforcer of social norms, standards of respectability, morality, and religious teachings (e.g., having “almost absolute control over the individual”). Despite women’s organizing and the insistence of feminist groups in Asia that the state should penalize violence against women in the home (e.g., domestic violence, forced marriage, and marital rape), Asian governments prefer not to regulate the family, particularly in matters deemed “private.”

Family violence became a foundational setting for violence and discrimination experienced later in life outside the home.

Sexual orientation and gender identity were so integral to personhood for our interviewees – as in society as a whole – that when their family became a place of danger and even hatred, they internalized a negative message that predictably left a deep feeling of rejection. Another possible explanation for the reporting about family violence is that this violence could be experienced as a deep betrayal, which understandably then carried particular significance for victims/survivors, as conveyed in the Philippines report: “family is family and you don’t throw away your family.” Findings across all the research countries showed that family violence had what interviewees explained as great, long lasting impact on themselves and others in their communities such as: debilitating sadness; eroded self-esteem; damaged self confidence; symptoms often associated with post traumatic stress disorder (PTSD), such as hyper vigilance, anger issues, self injury (cutting, burning skin), and alcohol and drug dependence. Interviewees also referred to family violence as a key reason for attempted suicide in some of the countries.

Many of the LBT individuals interviewed were compelled to leave home at a young age because of violence, which – in combination with other

types of rejection – had lasting consequences in their lives. In Japan, Malaysia and Philippines, transgender individuals who experienced a combination of family violence in the home and at school dropped out of school early, which respondents indicated caused long-term disrupted education, lost employment opportunities and difficulty gaining financial independence. In this manner, family violence became a foundational setting for violence and discrimination experienced later in life outside the home.

Mainstream women's organizations repeatedly describe the incredible struggles of women in heterosexual, cisgender marriages when they experience spousal violence that is framed by compulsory heterosexuality, such as: re-victimization by insensitive and biased police officers and poorly trained judges, difficulties obtaining protection orders, lack of safe affordable housing, high levels of retaliation against women who report violence by their husbands or in-laws, and lack of viable options for women to support themselves and their children without financial support. In all of these cases, intimate partner violence is compounded by stigma, shame and blaming of women for the violence they experience. Additionally, women who leave violent relationships are at high risk for retaliatory violence by the husband or partner.⁴⁷

Legal protections like protection orders were not an option for most of the LBT respondents.

The struggle for safety was much more pronounced when there was violence in same-sex relationships. Not only were LBT people's relationships treated as de facto (legally unrecognized) but in most of the research countries, they were also criminalized and condemned as immoral. Consequently, legal protections like protection orders were not an

option for most of the LBT respondents. Asking for police or other intervention was too risky for both the victim and the same-sex perpetrator because of the presence of sodomy laws, morality laws and religious law that shifted the focus of the laws away from victim protection and violence prevention to penalizing LBT people for the nature of their relationship (i.e., same-sex and therefore "against the order of nature.") Furthermore, the general silences about (and relative invisibility of) same-sex partner violence made it difficult for victims to disclose what was happening in their relationship and obtain LBT-sensitive services. The risks of disclosing same-sex partner violence also meant negative publicity, community ostracism, and being outed in an LGBT hostile climate.

Visibility of non-conforming gender expression may be an added motivator for families to force LBT individuals into heterosexual marriage.

Forced marriage was an example of family violence that involved emotional and sometimes physical violence. The Pakistan research team spoke to several lesbians and bisexual women who were forced into heterosexual marriages by their parents, and who, at that time, had already been experiencing other kinds of violence from their parents. Interviewees left the violence of one household (natal home) only to enter the violence of another household (marital home) with husbands who physically, verbally and sexually battered them. Entering violent marriages was thus the continuation of violence perpetrated by the family of origin. Furthermore, marital rape was a contested issue in all the five research countries, with members of legislatures defending husbands' entitlement to sex in marriage, and religious leaders attacking women's right to refuse or choose if and when they wanted sex with their husbands. While forced marriage is a recognized problem among heterosexual, cisgender women and girls, the visibility of non-conforming gender expression may be an added motivator for families to force

47 Chic Dabby, Hetana Patel and Grace Poore, "Shattered Lives: Homicides, Domestic Violence And Asian Families," *Asia & Pacific Islander Institute on Domestic Violence*, February 2010, <http://www.apiidv.org/violence/homicide.php>.

LBT individuals into heterosexual marriage. If they are subjected to spousal violence, as the Pakistan research shows, redress becomes out of the question. There is no recourse for individuals who have defied the cultural and social norms that religious leaders impose on families, and which the government relies on families to uphold.

Lesbians and bisexual women who moved out of the family home were living “outside the norms of protection for women.”

Most LBT people could not freely or easily move away from the family home because of economic necessity. Several LBT people in this research, particularly transgender women, who did leave home to escape the “unbearable environment,” faced poverty because of employment discrimination and economic exploitation (i.e., exploitative employers, absence of labor law protections). They also experienced street attacks and police abuse. Additionally, in Pakistan, Sri Lanka and Malaysia, family and cultural expectations required daughters to remain with their parents until they were married, trapping many lesbians and bisexual women in violent households. In such country contexts, lesbians and bisexual women who moved out of the family home were living “outside the norms of protection for women,”⁴⁸ in the same way as single heterosexual cisgender women who left home. As women, regardless of gender expression, living on their own meant contending with the risks of sexual harassment and sexual violence by landlords, neighbors or police – who tended to equate women’s autonomy with sexual availability (read as male entitlement) and/or assumed that the women were engaging in unlawful activity (e.g., operating a brothel).⁴⁹

48 Irma Morales Waugh, “Examining The Sexual Harassment Experiences of Mexican Immigrant Farmworking Women,” *Violence Against Women*, Vol 16 (3), March 2010.

49 Women’s rights activists in India and Pakistan pointed this out.

SUICIDE

Reports from all five countries indicated that many LBT people saw suicide as a way to deal with – and possibly end – the violence in their lives. Most noticeably, over half of the LBT interviewees in the Japan study said that they had “considered suicide.” This finding takes on particular significance in light of the fact that about 30,000 people a year between 1988 and 2012 committed suicide in Japan, according to the country report.⁵⁰ Sadly, a transgender man, interviewed for the Japan study, who had frequently attempted suicide because of the violence he was experiencing, did kill himself before the research was completed. In Sri Lanka, one-third of the LBT interviewees reported that they attempted suicide. There was a pattern in Sri Lanka of couple suicides by lesbians whose families forced them to end their relationships and/or whose families forced them into heterosexual marriages.

From these findings we deduced that suicide or attempted suicide by LBT people in Asia was a relatively common, or at least consciously considered, response to the nexus of hetero-normativity and patriarchal structures of power operating inside and outside the home. In the five countries we researched, there were no available measures to counter cycles of violence. LBT individuals in some cases came to view suicide as the only way to cope with the violence in their lives.

4 Intimate partner violence was quite prevalent in Asia, including severe physical and sexual violence by violent partners.

Reports from Japan, Malaysia and Sri Lanka indicated that a number of LBT people interviewed for this project experienced violence in their relationships, which in some instances was prolonged and severe. Types of physical violence perpetrated by partners of LBT people in this

50 “Transition of the Number of People Committed Suicide,” *Jiji Press*, March 9, 2012, accessed on November 10, 2012, http://www.jiji.com/jc/v?p=ve_soc_tyosa-jikenjisatsu.

research included verbal denigration, beating, kicking, slapping, scratching, biting, choking, flinging of objects, and infliction of physical pain. Sexual violence included forced sexual acts and rape. In addition, violent partners inflicted emotional violence (e.g., verbal abuse), which occurred in tandem with, or leading up to, physical and sexual violence.

The research identified the primary perpetrators of partner violence in Asia as same-sex partners, dating partners, and male heterosexual cisgender partners of lesbians and bisexual women. Other perpetrators were cisgender and/or heterosexual partners of transgender individuals. Lesbian participants in this research who experienced same-sex partner violence mainly attributed the violence to their partners' jealousy and possessiveness. Violence by heterosexual male partners of bisexual women included verbal, physical and sexual assaults to denigrate victims' sexual orientation. For instance, the boyfriend of a bisexual woman in the Philippines beat her regularly because of her sexual orientation.

Women's shelter programs set up specifically to assist women fleeing violence turned away lesbians in need of emergency shelters for violence.

The boyfriend of a bisexual woman in Sri Lanka accused her of sleeping with women and raped her. Marital rape in forced marriages was an egregious problem, which compounded family violence. A young lesbian in Pakistan forced into a heterosexual marriage by her family reported that her husband regularly beat her severely for her reluctance to have sex with him. Another young lesbian, also forced by her family to marry, said she had to endure the husband's physical, verbal and sexual violence for one year before she could justify leaving the marriage to her family.

It is worth noting that the findings on same-sex intimate partner violence were troublesome for some of the research teams. Although intimate partner violence is generally high in Asia, it is often only looked at from the perspective of heterosexual,

cisgender women, with men as the perpetrators. Many of the researchers were concerned that reporting on same-sex partner violence could: show LBT people (particularly lesbians) in a bad light; draw attention away from findings on other kinds of violence directed at LBT people; or not be taken seriously, since in this instance, the violence was perpetrated by women (so can't be "that bad"). They were also concerned it could invite opportunities for criminalizing LBT people instead of providing resources to address this hidden problem.

5 Perpetrators of sexual violence against LBT people in Asia were likely to know their victims.

Roughly 25 percent to 50 percent of the LBT people interviewed for this research reported having suffered sexual violence, perpetrated primarily by people they knew – family members, spouses, co-workers, bosses and dating partners. This violence was carried out mostly in the home and workplace, and involved sexual taunts, derogatory name-calling, lewd gestures, groping buttocks, unwanted touching of breasts, forcing victims to perform oral sex, forcing victims to touch perpetrators' genitals, coercing sex, threatening rape, and actual rape (date rape and heterosexual partner rape, including marital rape). Gang rape of transgender women at private parties in Pakistan was reported by one khwajasara as being "quite normal and usual."

Date rape stood out in the Japan report. A lesbian who dated a heterosexual man because she believed it "could cure her sexual orientation" was raped by him when she refused sex. A transgender man who believed that dating a cisgender heterosexual man would "change back his gender to female" was raped for refusing sex. These narratives illustrated the negative physical and psychological impact of coercive gender and sexuality norms, exacerbated by male sexual violence. Some LBT individuals believed that reverting to heterosexual or cisgender identities would relieve their suffering from discrimination and stigmatization on the basis of non-conforming sexual orientation or gender identity.

“Corrective” rape and threats of “corrective” rape in Asia did appear in the research. In Sri Lanka, a bisexual woman reported that her boyfriend regularly raped her after he found out about her previous relationships with women. In Pakistan, a transgender man’s girlfriend’s sister, who objected to their relationship, recommended that the transman should be raped “in order to convert [him].” In Malaysia, a lesbian and former pengkid (Malay-Muslim androgynous woman or tomboy) received a rape threat over the telephone from male acquaintances on campus who were aware of her gender expression.

While the Philippines research for this project did not mention “corrective” rape, a joint stakeholder report submitted to the United Nations Human Rights Council for the 2011 Philippines Universal Periodic Review noted the State’s failure to provide redress mechanisms for sexual violence against LBT people, including “systematic rape of lesbians by men to ‘correct’ and remind lesbians that ‘they are still women.’”⁵¹ Several LBT interviewees testified that they had been subject to sexual violence by family members from childhood. In the Philippines, transwomen reported being raped, mostly by uncles.⁵² Most of the survivors said they were not aware until they become adults that what they went through is rape.

Strangers who perpetrated sexual violence on LBT people also used physical violence. These forms of violence were usually an escalation from verbal denigration and condemnation. Transgender women experienced most instances of sexual violence by strangers, particularly if they were sex workers or assumed to be sex workers. This

violence took place on the streets (all five countries), in vehicles (Malaysia and Philippines), and at private parties (Pakistan). Transgender victims of sexual violence inside vehicles reported being tied up or held hostage inside a vehicle and forced to perform “sexual favors.” Transgender victims of sexual violence by police in Pakistan reported that this violence was part of police extortion. Police officers forced transgender women sex workers to turn over their earnings, lure customers to the sex workers, and extort the customers.

Several disturbing misconceptions emerged in this research with regard to the reasons for rape. A transgender woman in Malaysia who was raped explained the rape as “bad luck” and stated, “[t]hat is what you get for being a girl when god made you a boy.” A pansexual woman in Pakistan, who was raped repeatedly in the home, blamed herself for being physically weak and not stopping the rapes. These testimonies parallel those of many cisgender, heterosexual women who also blame themselves when they are raped. Another misconception about sexual violence was that lesbians and bisexual women in Japan questioned whether rape can even happen in the context of female same-sex relationships. Transgender people in Japan had the impression that sexual violence only happened to “ordinary” (gender conforming) women, and therefore their experiences of unwanted touching of breasts and buttocks by co-workers or acquaintances did not constitute sexual assault or sexual harassment.

Some of the respondents did, however, clearly identify the links between the sexual violence they experienced and sexism (systematic discrimination against the female sex) and misogyny (violent expressions of hatred towards the female sex). Over one-third (15 out of 50) of Japanese LBT interviewees answered “no” when asked if sexual violence was perpetrated against them because of their non-conforming sexual orientation, gender identity and gender expression. Most of these respondents were lesbians, and they attributed sexual violence to the status accorded to women in Japan.

The Pakistan report also observed that sexualized pinching and touching of lesbians and bisexual

51 Submitted for 13th session of UN Universal Periodic Review of the Philippines. The report cites research conducted by ISIS International: “Surfacing Lesbians, Bisexual Women’s and Transgender People’s Issues in the Philippines: Towards Affinity Politics in the Feminist Movements” (2010), 16, http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS13_UPR_PHL_S13_2012_JointSubmission13_E.pdf.

52 Although in many Asian cultures, the terms “uncle” or “aunty” are also used by children to convey respect for older persons who are not related but are family friends, in this instance, the word uncle refers to parents’ siblings.

women by strangers in public spaces was “an extension of the harassment all women in Pakistan face,” and that sexual violence against LBT people in Pakistan was “part of a larger campaign of abuse and degradation [against] female-bodied people.” Transgender women also attributed the violence they experienced to their female presentation (i.e., gender expression). Toransu (transgender) individuals in Japan said that perpetrators perceived them as women and “[mis]treat[ed] them as women.” A transgender woman in the Philippines, who survived attempted rape, said that transgender women were viewed as “a sex slave, a play toy.” She explained, “It is tolerable for [cisgender] men to have sex with a transgender because [he] is still a man and it is [the transgender woman’s] punishment because he’s making himself a woman.”

LBT people are overlooked and forgotten when the State and NGOs implement measures to stop gender-motivated family violence.

Some LBT people in the research talked about sexual violence that they experienced as children. A lesbian in Japan whose father sexually violated her from the time she was in elementary school until fifth grade said the violence was motivated because of “being born a girl.” In Pakistan, lesbians and bisexual women who reported being sexually “molested” multiple times and over several years (some as long as six years) by male relatives or male household workers attributed the sexual violence to the vulnerability of girl children. In these lesbian narratives, there appeared to be no evidence that sexual orientation or gender expression were grounds for the sexual violence. However, those who experienced this type of violence concluded that they were violated because of the overall environment of sexism towards girl children, and the particular vulnerability of girl children to male adults in the family.

On the other hand, a transwoman in the Philippines reported being brutally raped by her uncle when she was eight years old. The physical injuries were so severe that she required surgery. In this instance the uncle, who was 20 years old, was charged and brought to trial. The transwoman recalled that

the perpetrator and his wife justified the rape by blaming her (an eight-year-old) for being a bakla (Tagalog put-down for transgender woman) and flirting or inviting the attention of the rapist uncle. Even the judge showed this bias. Eventually, the uncle was incarcerated.

We included narratives of child sexual violence in the report to show that violence experienced by LBT people occurred at different stages across the life span. We also wanted to raise the question of whether gender variant girls or effeminate boy children are targeted for child sexual violence because of their gender expression. IGLHRC hopes that further research can be undertaken about the sexual abuse of children in Asia to better understand if there are any links between sexual violence and perpetrators’ awareness of victims’ non-conforming sexual orientation, gender identity and gender expression. Not only do these concerns have implications for anti-violence initiatives but also for policy and law enforcement.

6 The greater the visibility of non-conforming sexual orientation, gender identity and gender expression, the greater the frequency of violence experienced by LBT people in Asia.

Everyone has the right to freedom of opinions and expression, regardless of sexual orientation and gender identity. This includes 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.

– Principle 19: The Yogyakarta Principles⁵³

LBT visibility refers to style of dressing, type of clothing, length of hair, manner of verbal and

⁵³ “The Yogyakarta Principles,” *Yogyakarta principles.org*, March 2007, http://www.yogyakartaprinciples.org/principles_en.htm.

non-verbal communication, and manner of interpersonal interactions.

The LBT persons interviewed for this research expressed different ways of “being out,” including: not hiding their sexual orientation or gender identity, disclosing only to friends or family, disclosing to family but not to employers, disclosing only in public but not to family, or some combination thereof. For those who were interviewed, the most significant form of expression of sexual orientation and gender identity was to themselves. Seeking words to articulate emotions and desires, and developing a sense of self and identity, were a part of this expression. Secondarily, interviewees placed importance on expression to the outside world, through clothing, physical appearance, words, actions and relationships. Relating to a partner sexually was an integral part of this expression. Research has shown that an individual’s capacity for expression is critically dependent on the evaluation of the expression – by herself and by others. As Australian legal scholar Gail Mason points out, visibility centrally shapes the incidence and effects of violence on the basis of sexual orientation, gender identity and gender expression, which makes safety from violence a context-dependent form of negotiation.⁵⁴ Mason argues that since people are normatively “presumed heterosexual,” those who indicate otherwise are singled out because of the “visibility of the transgressive sexual subject.”⁵⁵

In our research, when LBT people expressed their sexual orientation and/or gender identity, they were negatively perceived for defying heterosexual and binary gender norms. The negative values and meanings associated with homosexuality, transgenderism, cross-dressing, and non-conforming expressions of masculinity and femininity were encoded in the proscriptions of culture, religion, law, medicine, and other social ideologies and institutions. To the individuals interviewed for this research, the prohibitions were experienced as either repressive, punitive, or both.

54 Gail Mason, “Body Maps: Envisaging Homophobia, Violence and Safety,” *Social and Legal Studies* 10 (1) (2001), 23-44.

55 Ibid.

The findings of this research on violence against LBT people showed that the risk for physical, verbal, and even sexual violence was greater when LBT people’s sexual orientation, gender identity and gender expression were more visible. This pattern was particularly noticeable in (but not limited to) countries where religion was used to justify intolerance, and where State policy and views about homosexuality and transgenderism were closely aligned with religious leaders.

Indian lawyer and human rights activist, Arvind Narrain talks about “queer invisibility and hyper visibility” to describe the riskiness of being out and challenging the status quo (upheld by cultural, religious, class, urban, rural dictates) where visibility can completely marginalize and stigmatize LBT individuals and/or make them targets of criminal law.⁵⁶

EXAMPLES OF VIOLENCE ASSOCIATED WITH LBT VISIBILITY

In Malaysia, police and Islamic religious officers harassed and detained mak nyahs (Malay-Muslim transwomen) and butch lesbians more often than feminine presenting lesbians and bisexual women. For instance, a mak nyah was arrested at a food stall for wearing women’s attire, charged for “posing as women” – a criminal offence under Malaysian sharia (Islamic) law – and subsequently sentenced to one year in prison by the sharia court. Strangers on the street confronted a pengkid and her lesbian girlfriend, demanding to know if they were lovers and warned them not to continue their “shameful” behavior. In fact, LBT persons testified that their parents and siblings were stigmatized and criticized by neighbors, friends and relatives, especially for having visibly gender variant children or family members.

In Pakistan, the father of a transgender man beat him frequently for wearing men’s clothes and cutting his hair “too short.” A lesbian whose partnership with another woman became apparent to the family was beaten up by her younger

56 Arvind Narrain, *Queer: Despised Sexuality, Law and Social Change* (Bangalore: Books For Change, 2004).

brother, verbally denigrated by her sister as “ugly and disgusting,” and attacked with a knife by her father because she had “disobeyed” social norms. Even if Pakistani lesbians did not disclose their sexual orientation to family members, those who presented as butch lesbians were “pressured” by the family to “talk, behave, and act more womanly or feminine.” Khwajasaras (transwomen) were beaten, slapped, kicked and verbally ridiculed on the streets – actions in which the police were complicit – while they were begging or doing sex work.

In the Philippines, several men publicly assaulted a transgender woman on the street because “they were offended by her wearing a dress.” They beat her up, cut her hair, called her a shame to society, and threatened her with a gun. Transgender women and men were physically barred from entering or forced to vacate gender-segregated washrooms on trains.

In Japan, a gang of high school girls grabbed a toransu (transgender male-to-female) classmate, tore off her clothes and demanded, “What gender are you?”

In Sri Lanka, a group of men attacked a lesbian who views herself as a masculine female, pinned her against the wall and punched her in the parking lot of a nightclub frequented by lesbians. Formerly friendly neighbors threatened to rape two lesbians when the neighbors realized the women were a lesbian couple.

Workplace discrimination was also associated with LBT visibility. According to butch lesbians, transmen and transwomen in Japan, Malaysia, and the Philippines, prospective employers blatantly told job candidates during or after job interviews that they were not feminine or masculine enough, or were impersonating the “wrong” gender. LBT people in private sector jobs, whose identities were disclosed or discovered, reported that they were denied job promotions, opportunities to attend trainings, or permission to interact with employees at other branch offices of the company. This was the case even in Japan for transgender people who were legally recognized.

Employers who condoned LBT discrimination opened the door to violence in the workplace and forced LBT employees into the closet (i.e., compelled them to hide their sexual orientation and gender identity). The discrimination also discouraged reporting of workplace violence, and shut down access to redress. This was particularly clear for sexual violence in the workplace, which was directly related to LBT visibility. In Japanese work environments, transgender women reported that they experienced unwanted sexual language and sexualized taunts, which escalated to groping of breasts and buttocks. Lesbians and bisexual women who did not reveal their sexual orientation and were assumed to be heterosexual said that they did not experience workplace violence because of their sexual orientation – but because they were women (i.e., similar to the violence and sexual harassment experienced by their heterosexual female colleagues).

Discriminatory State policy was used to justify blatant mistreatment of LBT people whose sexual orientation and gender identity were visible. This was evident in places of employment, business establishments, media, and educational institutions.

It should not be the expectation that individual victims need to be self-reliant and resilient to deal with violence on their own while waiting for State action to reduce violence for all people.

In Malaysia, transgender women were prohibited from entering clubs in the northern state of Penang while butch lesbians and pengkids were permitted entry only if they purchased a beverage – sold to them at “much higher prices.” Anti-vice officers who targeted gay clubs and saunas for raids were more likely to exploit the discriminatory environment to physically and verbally harass mak nyah, pengkids and butch lesbians, than those whose gender expression more easily aligned with the prevailing (and imposed) gender norms.

In Japan, parliament passed the Gender Identity Disorder (GID) legislation in 2003 to allow transgender people to indicate their chosen gender in

the family register once they receive a psychiatric diagnosis of “gender identity disorder.” While this opened the route to legal recognition for transgender people, it came at the cost of compelled medical pathologization. Moreover, it heightened the visibility of transgender people who have become a point of focus of media and research groups, making legal recognition in exchange for medical pathologization a double-edged sword in terms of visibility. It gives Japanese toransu (transgender people) greater visibility in media and research – compared to sekumai (lesbians) and bisexual women who are relatively invisible in the media – but the media caricatures toransu (e.g., on television programs) as objects of ridicule. Visibility in this instance brought negative attention, which contributed to the justification of violence against Japanese toransu in schools, job sites, on the street, and in families.

Lesbians with economic means were able to “buy safety” by avoiding unsafe public spaces or by extricating themselves from potentially violent situations.

Visibility of LBT behaviors alone did not shape the perpetration of violence in the public sphere. Sexual orientation, gender identity and gender expression intersected with other identity markers such as religion, ethnicity, and economic status to influence how LBT people were perceived and treated, how LBT people navigated safety and practiced self-surveillance, and how they were resilient in the face of repressive conditions in the public and private spheres. In Malaysia and Sri Lanka for instance, lesbians with economic means were able to “buy safety” by avoiding unsafe public spaces or by extricating themselves from potentially violent situations. One interviewee explained, “There are certain activities I’ve curtailed...certain parts of town I won’t go to, I don’t walk on the streets, I go everywhere by car, I don’t take public transport.” English-speaking lesbians in Sri Lanka sometimes found that deploying language linked with specific groups or indicating privilege helped when facing threats. One respondent said “I spoke to him [verbal attacker]

in English because I know this always intimidates people...after awhile, he shut up and went away.”

The intersection of ethnicity and religion with sexual orientation, gender identity and gender expression also affected how LBT people navigated hostile terrain. Tamils make up a very small membership of LGBT groups in Sri Lanka. One reason is that with the history of violence and civil war⁵⁷ between the Sinhala state and Tamil groups fighting for self-governance, LBT people of Tamil ethnicity are at greater risk of violence than Sinhala and Burgher LBT people in Sri Lanka.⁵⁸ In Malaysia, the reverse was true: mak nyahs and pengkids as members of a majority ethnic (Malay) and majority religious (Muslim) group were in fact more vulnerable because of their majority status.⁵⁹ They come under greater surveillance by State and Islamic religious institutions because their non-conforming gender expressions made them hypervisible. Lesbians and bisexual women regardless of ethnicity and religion expressed the ability to pass as “straight” women, and gay transmen⁶⁰ could pass as “straight” men. However,

57 The Sri Lanka country chapter in this report indicates 40,000 Tamil civilians were killed and 60,000 Tamil civilians were injured in the civil war between the government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE).

58 It was difficult to find Tamil LBT people (only one came forward) to participate in the Sri Lanka study. The snowballing method of outreach contributed in part to this because the researchers were less networked with the Tamil-speaking community beyond the capital.

59 Article 160 of the Malaysian Constitution stipulates that all ethnic Malays must be Muslim. Non-Malays can also voluntarily choose to be Muslim.

60 Transmen tend to be the most invisible in Asian LGBT communities. They make up the smallest number of respondents in this research. Except for the Japanese word “toransu,” there is very little or no terminology for transmen in the nine local languages of this research. Compared to a variety of local words (positive, negative or reclaimed) available for transwomen, lesbians (and also gay men), transmen tend to be referred to by English terms and abbreviations – such as transman, female to male, F to M, FtM, or they are mistakenly conflated with butch, lesbian or tomboy. For example, the Malay term, pengkid is a broad reference for Malay women with non-conforming gender identity and gender expression – tomboys, butch women and androgynous women who like masculine dress styles. The Malaysia chapter notes that

pengkids and mak nyahs are perceived as openly defying and shaming the Malay identity (i.e., ethnicity), Muslim identity (i.e., religion), and therefore their Malaysian identity (i.e., nationality). It is also likely that pengkids and mak nyahs were perceived as a challenge to Malay masculinity and “an affront” to gender-conforming relationships.

Violence against LBT people by non-State actors and private individuals is treated as understandable, normal, justifiable, even inevitable, and this “inevitability” is a justification for the State sidestepping its due diligence to LBT people.

The intersection of poverty, sexual orientation, gender identity and gender expression made khwajasaras in Pakistan, transwomen in the Philippines, and mak nyahs in Malaysia from the lower economic strata even more vulnerable to arbitrary arrest, verbal and physical humiliation during detention, and physical violence from police officers and officers of religious affairs departments. Several aspects of disadvantage, hostility and exclusion compounded the discrimination felt by all respondents to create a climate of extreme abuse and impunity. In this case, transgender visibility and poverty as well as assumptions that all transgender women were sex workers – and that sex workers should be mistreated – were the contributing factors. In Malaysia, mak nyahs were perceived to be violating sharia laws regarding non-conforming gender expression. Consequently, poor transwomen (especially although not limited to sex workers)

were fined and jailed more frequently than other respondents. As the Malaysia research indicates, economically vulnerable mak nyah were “more often persecuted” by the sharia courts. In Pakistan, although the Supreme Court had ordered that hijras and khwajasaras be given welfare benefits and that a third gender legal category be created,⁶¹ these individuals reported regular physical violence in public spaces.

Undoubtedly, the visibility of LBT identities and behaviors was subjective, based on the perceptions and values of those doing the perceiving, and on prevailing norms. In some instances, the outward, visible cues of being lesbian or transgender were invisible to the public because they were not socially recognized as such. As a result, they went unnoticed and did not incite hostile responses.

Visibility also served as an advantage and was used strategically to provide cover in public spaces. This happened, for instance, when some lesbians in Sri Lanka “passed” by taking on the “mis-recognized” gender role they were assumed to have; that is, if they were frequently assumed to be a boy or a man, they passed as one to avoid unnecessary questioning and negative comments. Passing as a man was also seen as useful to deflect unwanted male attention, as noted by Jayanthi Kuru-Utumpala: “Dressing tough provides some degree of safety and security in a male-dominated world. On a number of occasions I too have found it convenient to pass as a boy while riding my motorbike after dark. The fact that I look boyish anyway often works to my advantage as I can zip around at any time without any undue attention.”⁶²

pengkids have always been a visible presence in Malaysia and have their own support networks made up exclusively of pengkids. Transmen tend not to attend LGBT events. There is no Malay term for transmen; pengkid is sometimes used for lack of specific terminology. In comparison, the negative Malay term, mak nyah for transwomen has been reclaimed and politicized by Malay transwomen and is currently used as a positive self-identifier. This term is even claimed by non-Malay transwomen in the absence of similar politicized terms in the Chinese and Tamil languages.

61 “Pakistan Eunuchs To Have Distinct Gender,” *BBC News*, December 23, 2009, http://news.bbc.co.uk/2/hi/south_asia/8428819.stm.

62 “Butching It Up: An Analysis of Same Sex Female Masculinity in Sri Lanka,” *Culture, Health and Sexuality: An International Journal for Research, Intervention and Care*, July 18, 2013, <http://doi.org/10.1080/13691058.2013.807520>.

7 Most LBT people in Asia reported an abysmal lack of sensitive external support systems and relied on personal resiliency to deal with violence.

LBT victims of violence are disadvantaged even before they can seek redress for violence due to the risks of being criminalized⁶³ by the State; stigmatized by society; condemned by religious groups; and rejected by family, if their identities or reasons for violence are revealed. This disadvantage, as the research shows, prevented many victims from seeking services from hospitals, emergency clinics, counseling centers, or shelters for domestic violence victims.

When we asked respondents what kind of help they sought when they experienced violence, the first response was almost universally that there was no help. Even where mainstream services such as violence intervention programs for women exist, LBT people said they experienced discriminatory and insensitive treatment. For instance, LBT people in the Philippines reported a lack of LBT friendly and LBT sensitive staff at police stations and domestic violence desks at hospitals. In Malaysia, LBT people stated that mental health professionals, doctors and gynecologists were “ill-equipped” and that they did not have critical information about LBT patients. In Pakistan, women’s shelter programs set up specifically to assist women fleeing violence turned away lesbians in need of emergency shelters for violence.⁶⁴ In Japan,

domestic violence shelters for women did not accept lesbians, and while counseling was available for domestic violence, those who provided counseling expected LBT victims of violence to disregard their sexual orientation or gender identity when talking about the violence. This pressure to compartmentalize and invisibilize themselves was described by some Japanese LBT people as another layer of violence.

Discriminatory and insensitive services reinforced the overall prejudiced treatment that LBT victims of violence already experienced. This kind of treatment and inadequate support to LBT people who were already in crisis made these situations much more egregious because it increased the victims’ vulnerability and their experience of defeat and isolation. As noted by several LBT people in Malaysia, Philippines and Japan, their negative experiences from seeking help in the past discouraged them from doing so again in the future. It also compounded the injury from the initial violence. Some of the Japanese respondents who insisted that “[s]eeking help from someone didn’t even come to mind” may have instinctively understood that being lesbian or bisexual or gender variant disqualified a person from external support. To have this confirmed at a time of great need is a travesty.

Both secular and religious laws ended up protecting State actors ... who abused their authority while carrying out their duties.

LBT people in every country reported that they mostly relied on themselves to deal with the violence in their lives. Daily coping mechanisms included normalization of the violence (e.g., ignoring, downplaying, and pretending to “accept” the violence as normal in a world where non-conforming sexual orientation, gender identity and gender expression were not tolerated). Coping methods for family violence included avoiding family gatherings, daily self-isolation to minimize

63 Worldwide, male homosexuality is prohibited and punishable under anti-sodomy laws in 76 countries lesbianism is illegal in about 30 countries. Non-conforming gender behaviors are criminalized under wide-ranging laws, frequently categorized as public order laws or morality laws, such as vagrancy laws, anti-cross dressing laws, and impersonation laws. The risk of criminalization under State law is compounded by the risk of being sanctioned under State-endorsed religious law, such as provisions in Sharia or Islamic law, which also carry heavy if not heavier penalties. See “State-Sponsored Homophobia: A world survey of laws: Criminalisation, protection and recognition of same-sex love,” International Lesbian Gay Bisexual Trans and Intersex Association, May 2013, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2013.pdf and <http://ilga.org>.

64 Pakistan’s hijras and khwajasaras are legally eligible for welfare

benefits and are legally recognized as a third gender category, but there are no laws in Pakistan to protect and legalize lesbians and bisexual women.

interactions with family members, and using humor to deflect verbal denigration. Some survivors of violence coped by playing sports; escaping into books and films, prayer and spiritual practices; disclosing the violence to friends; or forming LBT social networks. Several respondents in Sri Lanka also reported that despite the violence, they still felt strong and proud of themselves.

The research did present some hopeful reports from LBT individuals in Sri Lanka and Malaysia who indicated that where possible, they “sought solace or guidance” from women’s or LGBT support groups, friends, counselors and psychotherapists in the feminist community, or feminist movements. In the Philippines, a few transgender women reported that their first positive experience of support came from school guidance counselors.

Not all LBT people passively accepted the violence. Some reported fighting back. In Pakistan, a bisexual woman, sexually violated by strangers in public spaces, said she would “turn around and hit” the perpetrators. In Sri Lanka, some lesbians facing family violence argued back when family members verbally and emotionally violated them, even if this did not stop the violence.

Being victimized also catalyzed some survivors of violence to become interventionists, for example: speaking out on behalf of another family member who was being sexually violated in the family; initiating group action to negotiate with school authorities about hair length for transgender students; advocating with an employer for transgender toilets; publishing a manual on how to protect LGBT people from discrimination; using social media to protest violence and mobilize support for victims; and fighting religious condemnation with the religious conviction that “god is a just god” and accepts LBT people.

Personal coping methods, inner strength, and acts of resistance were clearly a testament to the resiliency of LBT people. However, our research also revealed the enormous human cost of violence on the basis of sexual orientation, gender identity and gender discrimination. The following list shows the long-term impact of violence against

LBT people. Some of the effects of violence were evident across all the research countries.

In **Japan**, LBT people reported: attempting suicide, having suicidal thoughts, self-harming behaviors, depression, flashbacks, chronic physical pain and illnesses, substance addiction, insomnia, self-blame, loss of confidence, low self-esteem, broken friendships, loss of social contacts, isolation, dropping out of school, inability to complete education, job loss, eviction, and difficulty finding housing.

In **Malaysia**, LBT interviewees reported: attempting suicide, excessive drinking, drug use, isolation, falling behind in school, being expelled or experiencing other disruptions to their education, physical injuries, and persistent nightmares.

In **Pakistan**, LBT people reported: low morale, depression, helplessness, extreme anger and sadness.

In the **Philippines**, LBT respondents reported: sadness, clinical depression, fear of rejection, fear of relationships, self-doubt, self-blame, despair, anger, paranoia, hyper vigilance, combativeness, and aggression towards themselves and their partners.

In **Sri Lanka**, LBT interviewees reported: depression, anxiety, anger, frustration, fear, self-hatred, self-blame, sadness, self-harming behaviors, attempting suicide, suicidal thoughts, feeling paralyzed because of violence, dependence on anti-depressants, and psychosomatic problems like eczema, substance abuse, and chain smoking.

Also, in **Japan** and **Sri Lanka**, media reports of LBT suicides linked the deaths to experiencing emotional violence and family violence. What this also revealed was the high cost of State failure to ensure safe living conditions for people with non-conforming sexual orientation, gender identity and gender expression. A high number of suicides, as reflected in this research, were preceded by multiple types of discrimination – and consequently, violence – against the person based on their intersecting identities (e.g., their class, economic status, education level, religious and ethnic backgrounds, in addition to them being LBT).

CONCLUSIONS

STATE PROGRAMS ON GENDER-MOTIVATED VIOLENCE OVERLOOK LBT PEOPLE

The findings on family violence prompt the following conclusions about violence against LBT people in the private sphere:

1. Violence against LBT people in the private sphere is not recognized as a serious problem.
2. Family violence against LBT people is justified by and blamed on the victims' non-conforming sexual orientation, gender identity and gender expression.
3. LBT children and youth are neglected when mechanisms and programs are developed to address violence against children.
4. LBT people are overlooked and forgotten when the State and NGOs implement measures to stop gender-motivated family violence against women.
5. Links are not being considered between homophobia, transphobia and gender-based violence.

CLOSETING OF VIOLENCE

Many people interviewed for this research focused more on violence by family than violence by State actors, community members or strangers. We gathered from this that the psychological and emotional injuries sustained from family violence were more present in individuals' minds than the violence they experienced by State actors. That said, in some of the research countries, such as Japan, Malaysia and Sri Lanka, LBT people struggled with naming family violence as violence and family members as perpetrators. For instance, even when respondents clearly identified specific acts such as beating, slapping, sexual fondling and hair pulling, they were uncomfortable using the term "violence" for these actions when the perpetrators were family members, intimate

partners, and in some instances co-workers (e.g., in Japan). Transgender interviewees who unhesitatingly identified derogatory name-calling and sexualized insults against them on the streets as verbal violence were reluctant to categorize or name the same actions as verbal violence when they occurred in their homes.

On the surface, it seemed that this refusal to attach "violence" and "perpetrator" to violence in the private sphere was tied to filial loyalty, duty, and the need to protect family from outsider judgment and criticism. However, there could be other more complicated reasons. Some lesbians in Japan felt somehow responsible for the violence because it was triggered by their non-conformity. Some lesbians in Pakistan and Malaysia had internalized the religious condemnation of parents and religious institutions to the extent of wanting to revert to leading heteronormative lives. These individuals experienced the violence as understandable and their need to conform as an obligation to family and religion. Lesbians in Sri Lanka and Pakistan, knowing that their sexual orientation and gender expression were illegal and stigmatized, struggled with self-hatred. They rationalized the violence they experienced as somehow justified for bringing disharmony and inconvenience to their families due to the shame associated with having an LBT family member.

The founder of a hate crimes monitoring organization in the Philippines, Lacsamana, explained in a news article that the invisibility of LGBT killings in that country was because families of the victims "would rather have the police tag the incident as 'mere robberies' than an overt and targeted attack on homosexuals." Lacsamana said that because families "feel ashamed that their loved one is gay, they often decide not to pursue the case anymore, especially when the tabloids sensationalize the crime in the headlines."⁶⁵

65 Joseph Holandes Ubalde, "Afraid: Killings Of LGBTs In The Philippines On The Rise," *Interaksyon*, June 27, 2011, <http://www.interaksyon.com/article/6916/afraid-killings-of-lgbts-in-philippines-on-the-rise>.

LACK OF ACCOUNTABILITY

The findings showed lack of due diligence in preventing and punishing violence against LBT people, and failure to provide an environment conducive to them living violence-free lives. This lack of accountability was inconsistent with the international treaty agreements that Japan, Malaysia, Pakistan, Philippines and Sri Lanka have all signed.⁶⁶ Further, there was evidence of State impunity contributing to a culture of impunity within families. Levels of violence directed at LBT people were linked to the State's views and positions on sexual rights and gender non-conformity. Three trends in the research showed this:

1. **Where government policies were inconsistent regarding LBT rights, this lack of consistency tended to facilitate the escalation of discrimination into discriminatory violence.**
2. **The greater the influence of religiously based (or expressed) homophobia and transphobia on State policy, the higher the possibility and frequency of violence linked to visibility of non-conforming gender expression and sexual orientations.**⁶⁷
3. **Derisive public statements by government officials and/or failure to publicly address discrimination and violence against**

66 All five of the research countries have ratified the CEDAW Convention. However, it is only since 2010 that LBT groups and women's groups in Malaysia, Sri Lanka, Japan and Philippines have used this Convention to advocate protections from violence. The impetus for this is most likely Recommendation 28 on the core obligations of States that includes lesbians as a vulnerable group. The research countries have also ratified the Convention On The Rights Of The Child. In addition, Japan, Philippines and Sri Lanka have signed the International Covenant on Civil and Political Rights. These treaties explicitly name sexual orientation (and gender identity in some) as a protected category.

67 Including verbal hostility; physical attacks in public spaces, harassment and violence, including sexual assaults by police and religious officers; and school violence where LBT youth face physical, verbal even sexual harassment, and expulsions.

LBT people increased the likelihood and severity of hostilities towards LBT people by members of public – with little consequence to perpetrators.

These trends more than likely influenced how LBT people were treated by their families.

Expecting the State to be accountable and exercise due diligence in compliance with international commitments is critical for stopping violence against LBT people. However, this must be accompanied by stronger community capacity for sustainable and supportive interventions, as part of civil society accountability to marginalized communities. It should not be the expectation that individual victims need to be self-reliant and resilient to deal with violence on their own while waiting for State action to reduce violence for all people – those who are female-bodied, gender variant, cisgender women and men, lesbian, bisexual, asexual, heterosexual, single, coupled, married or familial.

LACK OF ACCESS TO REDRESS

Criminalization, stigmatization and discrimination discouraged LBT people from seeking help for violence. Again and again, individual testimonies revealed insensitive or exclusionary encounters with healthcare professionals, mental health professionals and NGOs. Seeking legal redress was even more risky with Penal Code restrictions in Malaysia, Pakistan and Sri Lanka that severely penalized same-sex sexual relations. People with non-conforming gender expression were also particularly vulnerable for criminalization under new laws to curb “gender impersonation” (i.e., in Sri Lanka and Malaysia). Religious laws in Malaysia and Pakistan added another layer of surveillance and penalties, stripping away access to redress for LBT people who were subject to sharia law.

Both secular and religious laws ended up protecting State actors, in particular, religious officers working for State-established institutions, vice officers, and police officers who

abused their authority while carrying out their duties. These State actors went so far as to break the law themselves, by mistreating individuals with harassment, intimidation, physical and verbal humiliation, extortion and sexual advances. These behaviors signal an acceptance and normalization of human rights violations against LBT people by the State. It reinforces for those experiencing violence in both the public and private spheres that they have to silently bear “dehumanizing harm” against a backdrop of “punitive and discriminatory legal frameworks”⁶⁸ with only themselves (i.e., personal resilience) and their friends to turn to for solace.

SURVIVORS AT GREAT COST

Over half of the LBT interviewees in the Japan study said that they had “considered suicide.” ... In Sri Lanka, one-third of the LBT interviewees reported that they attempted suicide.

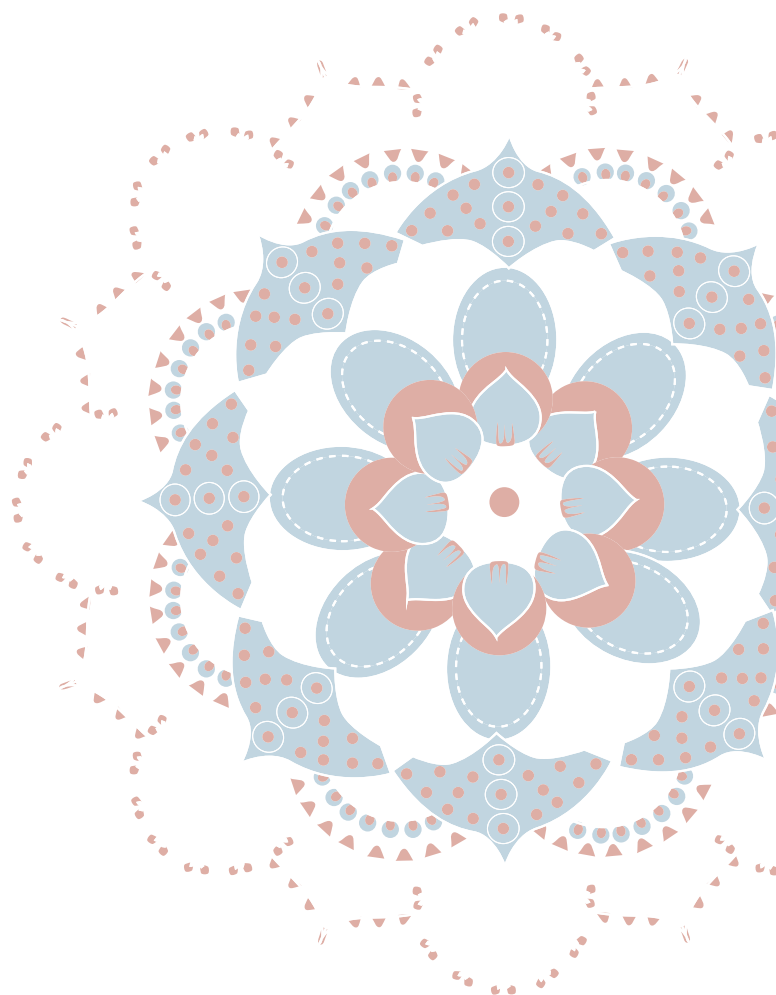
Anecdotal feedback from documenters indicated that most of the individuals who agreed to be interviewed wanted to help make a difference by revealing what had happened to them. All five studies documented ways in which LBT people coped with violence and daily discrimination despite the glaring lack of wellness resources. The few examples of LBT (primarily transgender women’s) activism were documented in the Philippines.

While many talked of having survived violence, the quality of survival was affected – even compromised – by this lack of resources. At the time of documentation, there was no LGBT crisis hotline in Japan. NGOs and women’s shelters generally declined LBT individuals needing emergency assistance. One or two mental health

professionals (in Malaysia and Sri Lanka) stood out as champions for being available to LBT people, which further highlighted the crisis of need for trustworthy, LBT-sensitive services, including: emergency housing; family interventions; counseling; legal advocacy; medical interventions; and even faith-based support to counter the damaging impact of using religion to spread community intolerance and hate, including self-hatred.

The most tragic example of the cumulative impact of violence and discrimination was documented in Japan when one of the interviewees, a transgender man, killed himself during the research.

These situations perhaps demonstrate how country context makes a difference in how individuals are able to respond to violence.



68 Terms borrowed from United Nations Development Programme, Asia Pacific Forum, and IDLO, *Regional Report: The Capacity Of National Human Rights Institutions To Address Human Rights IN Relation To Sexual Orientation, Gender Identity And HIV*, 2013.

RECOMMENDATIONS

Regardless of the different legal systems in Japan, Malaysia, Pakistan, Philippines and Sri Lanka, and taking into consideration differences in religion, inherited colonial legacies, human rights advances or setbacks, and strength of civil society movements in the respective countries, IGLHRC joins the research partners in recommending the following.

GENERAL RECOMMENDATIONS

The State must take responsibility for ensuring an environment that is supportive of *all* and not only some women's rights.

The State must exercise due diligence in preventing violence and promoting the safety and dignity of *all* marginalized and vulnerable populations – ethnic minorities, people with disabilities, indigenous communities, religious minorities, including sexual minorities and non-conforming gender minorities.

Although LBT people are constitutionally assured of equal protection of the law, in practice there are no legal protections on the grounds of sexual orientation and gender identity. Legislation prohibiting particular kinds of gender-motivated violence (e.g., domestic violence, intimate partner violence, forced marriage, rape) must extend protections and redress to LBT people. Anti-discrimination legislation must include sexual orientation and gender identity as protected categories.

TO GOVERNMENT

- Prohibit discrimination on the basis of sexual orientation, gender identity and gender expression.
- Decriminalize consensual, adult same-sex relations between women and between men.
- Remove laws that unfairly and disproportionately target people with non-conforming gender for criminal penalties.
- Denounce the use of religious discourse to promote stigma, violence and discrimination against lesbians, bisexual women, and people with non-conforming gender identity and gender expression.

TO NATIONAL HUMAN RIGHTS INSTITUTIONS

- Investigate and document violence against LBT people.
- Ensure that complaint mechanisms and reporting procedures are safe and do not subject LBT people to family, community and State recriminations (including criminalization).
- Recommend preventative and reparative actions to redress violence against LBT people.
- Report violence and discrimination against LBT people to relevant United Nations entities.

TO CIVIL SOCIETY

- LBT groups must inform themselves about the international treaties that their governments have ratified and learn how to use the UN processes to advocate LBT rights.
- Women's rights NGOs and human rights NGOs must visibilize violence and discrimination against LBT people.

DETAILED RECOMMENDATIONS

EXECUTIVE BRANCH

- The government at the highest level must send a clear message that it does not tolerate or condone intolerance, prejudice, discrimination and violence against LBT people.
- The government must direct all ministries and State institutions to take immediate measures to prohibit discrimination on the basis of sexual orientation, gender identity and gender expression.
- Law and policy reform must be accompanied by State funding for awareness training (e.g., counselor training to assist LBT victims of physical assaults, sexual assaults, rape, teacher training for human rights instruction, police training, judicial training).

LEGISLATIVE BRANCH

- Parliament must amend or adopt laws to penalize violence against LBT people in the public sphere (by State and non-State actors) and in the private sphere (by non-State actors, including private individuals).
- Parliament must remove laws that criminalize consensual, adult same-sex relations between women and between men.
- Parliament must amend laws that unfairly and disproportionately target LBT people for criminal penalties.
- Parliament must amend or adopt laws protecting children from family violence to recognize that children with non-conforming sexual orientation, gender identity and gender expression are also vulnerable to family violence.
- Parliament must amend or adopt laws prohibiting rape, domestic violence and intimate partner violence to extend protections to LBT people.
- Parliament must amend or adopt laws on sexual harassment in the workplace to expand definitions that take into consideration sexual orientation, gender identity and gender expression as grounds for sexual harassment.

MINISTRY OF EDUCATION

- The Ministry of Education must address violence and discrimination in schools and universities (e.g., issue directives to end bullying, discriminatory punishments, suspension, expulsion, forced psychological counseling or “reparative” therapies that are meant to “convert” students with non-conforming sexual orientation, gender identity and gender expression).
- The Ministry of Education must ensure that all primary and secondary school curriculum incorporates human rights instruction. This curriculum must promote respect, diversity, plurality, and equality for LBT people.
- The Ministry of Education must require teacher training for primary and secondary teachers and principals on how to teach human rights to primary and secondary school students. The training must

prepare teachers and principals to promote respect and civic-mindedness towards all marginalized and vulnerable communities, including LBT people.

SOCIAL WELFARE MINISTRY AND MINISTRY OF WOMEN AND CHILDREN

- Respective government ministries must direct State-funded victim assistance programs to expand services to LBT people.
- Respective government ministries must ensure that NGOs receive training and implement good practices on safe, inclusive, sensitive services for LBT people in need of assistance for violence.

LAW ENFORCEMENT

- The National Chief of Police must initiate immediate steps for police training in all jurisdictions on how to incorporate human rights standards into law enforcement, including good practices on responding to violence against LBT people, and treatment of LBT people in custody.
- Women's desks at police stations must include an LBT advisor or focal point to ensure proper implementation of good practices and LBT sensitivity standards.

JUDICIARY

- Judges must be trained in international human rights standards relating to sexual orientation and gender identity (e.g., CEDAW, ICCPR, ICESCR and CRC Principles and Recommendations, Yogyakarta Principles).
- Where possible, judges must reference (incorporate in their rulings) treaty body recommendations on sexual orientation and gender identity that are relevant to their State. Judiciaries (i.e., high courts, appeals courts, constitutional courts) can set the tone for domestication of international treaty agreements.

NATIONAL HUMAN RIGHTS INSTITUTION AND NATIONAL WOMEN'S COMMISSION

- The National Commission on Human Rights (NCHR) must convene safe and confidential consultations with LBT groups and individuals to better understand violence and root causes of violence against LBT people.
- The NCHR must investigate reports of violence against LBT people, including police abuses, custodial violence, violence in schools, and violence by State religious officers/departments.
- Complaint mechanisms and reporting procedures must be safe, and revised if necessary, to ensure that LBT people are not subject to family, community and State recriminations (including criminalization).
- The NCHR must promptly and publicly challenge stigmatization and vilification of LBT people by media.
- The National Commission on Women (NCW), in its educational materials and measures to advance women's rights, must incorporate the rights to safety, security and non-discrimination for LBT people (i.e., recognize sexual orientation, gender identity and gender expression as grounds for violence and discrimination).
- The NCHR and NCW must conduct their own research and documentation on the prevalence and impact of violence against LBT people, and publicize their findings.
- The NCHR and NCW must recommend to the government preventative and reparative actions for violence against LBT people.

GENERAL RECOMMENDATIONS

The State must raise awareness in families on how to be supportive of LBT family members.

The State must raise awareness about the impact of violence in the private sphere that LBT people experience while facing violence and discrimination outside the home, and possibly isolated from support and community.

DETAILED RECOMMENDATIONS

MINISTRY OF WOMEN AND CHILDREN AND SOCIAL WELFARE MINISTRY

- Respective government ministries focused on the Millennium Development Goals must include violence and discrimination against LBT people as barriers to eradicating poverty, achieving gender equality, ensuring universal healthcare, and universal primary education for women and girls. Deliverables must integrate LBT needs and concerns.
- Respective government ministries must include same-sex families in their focus on family matters.
- The Ministry of Women and Children should hold hearings on the effects of violence within the family on LBT people (e.g., how violence impacts LBT mental health, education, poverty reduction) as part of their work on ending violence in the private sphere (such as domestic violence).

MINISTRY OF HEALTH

- The Ministry of Health must develop training materials to sensitize mental health professionals on LBT issues based on up-to-date, internationally credited scientific information, and must implement training programs to ensure these concerns are understood.
- The Ministry of Health must provide training and resources for mental health practitioners (counselors, therapists) so they are better able to recognize signs of family violence and better trained to support and assist LBT family members as well as parents with LBT children.
- The Ministry of Health must adopt and implement guidelines on non-discrimination based on sexual orientation, gender identity and gender expression. Health care providers who discriminate against LBT people should be subject to disciplinary proceedings.

GENERAL RECOMMENDATIONS

The State must comply with international treaties that it ratifies and live up to international agreements it makes such as the Beijing Platform for Action – to remove obstacles from both the public and private spheres that prevent all women (female bodied, gender variant, lesbian, bisexual) and female-to-male transgender men from enjoying violence-free lives.

DETAILED RECOMMENDATIONS

EXECUTIVE BRANCH

- The government must abide by recommendations made during the Universal Periodic Review and by treaty bodies. As part of this process, it must engage with civil society about LBT concerns and needs.
- The government cannot engage in threats to prevent civil society reporting to UN mechanisms as this violates international standards on human rights.
- The government must decry the use of religion or culture as justification for violence and discrimination against people on the basis of non-conforming sexual orientation, gender identity and gender expression.
- The government must ensure that religious leaders or State officials do not promote intolerance and stigmatization against LBT people of that faith and LBT people in general. Public denouncement must follow when this standard is violated.
- The government must ensure peaceful freedom of expression, freedom of opinion and exchange of information about LBT health and bodily rights, freedom of association, and freedom of assembly.

CIVIL SOCIETY GROUPS

- Women's NGOs must meaningfully and visibly incorporate LBT issues in their shadow reports to treaty bodies, particularly CEDAW and CRC.
- Human rights NGOs must meaningfully and visibly include violence against LBT people in their reports for the Universal Periodic Review.
- Non-LBT NGOs and Community Based Organizations (CBOs) that are invited to national consultations with government ministries must ensure the participation of LBT activists and that LBT issues are represented.
- LBT groups must inform themselves about the international treaties that their governments have ratified and learn how to use the UN process to advocate LBT rights.
- LBT groups must broaden their base of activism, community support, and strategic alliances, for instance by collaborating with women's rights, human rights groups, migrant worker groups, health groups, or anti-violence groups that are engaging with the United Nations (for Universal Periodic Review, Commission On The Status of Women, regional human rights consultations such as in the ASEAN region).

GENERAL RECOMMENDATIONS

State actions must be accompanied by stronger community capacity for sustainable and supportive interventions, as part of civil society accountability to vulnerable communities. It should not be the expectation that individual victims need to be self-reliant and resilient to deal with violence on their own while waiting for State action to reduce violence.

Civil society groups must confront their attitudinal barriers about same-sex partners, lesbians, bisexual women, transgender women and transgender men, and generally anyone with non-conforming gender expression.

DETAILED RECOMMENDATIONS

NON-GOVERNMENTAL ORGANIZATIONS (NGOS) AND COMMUNITY BASED ORGANIZATIONS (CBOS)

- NGOs and CBOs must ensure that their educational materials and/or hotlines for domestic violence, intimate partner violence, or child abuse include information about violence directed at LBT family members.
- Women's NGOs and CBOs must provide counselor training to ensure inclusive, sensitive and supportive services to LBT victims of violence (such as physical assaults, sexual assaults, rape).
- NGOs and CBOs focused on women's rights, LGBT rights, children's rights, human rights and sex worker rights must ensure that their counselors are trained on how to recognize signs of family violence and manifestations of this violence against LBT youth and adults.
- NGOs and CBOs focused on issues relating to families, women and children must be better trained to support and assist LBT family members as well as parents with LBT children.
- NGOs and CBOs providing legal aid services must be informed about the laws affecting LBT people and be better trained to assist LBT victims of violence in need of legal redress (e.g., court advocacy) or other kinds of advocacy involving State violence (e.g., by police, immigration, hospital, social welfare, government employer).
- Civil society groups in general must raise awareness about the impact of family and intimate partner violence that LBT people experience while facing violence and discrimination outside the home, when they are at risk of being isolated from support and community.

GENERAL RECOMMENDATIONS

The media and places of worship often serve as venues for public debate on laws and issues relating to LBT people (e.g., repeal of sodomy laws, same-sex relationships, non conforming gender, public morality, human rights). Do not use these spaces to encourage discrimination.

DETAILED RECOMMENDATIONS

MEDIA

- LBT groups must develop culturally relevant media training materials and be trained on how to engage potential media allies to challenge homophobia, transphobia and violence.
- Media must challenge discriminatory or hateful reporting about LBT people within their own institutions.
- Reporting on how a State has been reviewed by the UN (during its Universal Periodic Review or CEDAW review) is an opportunity for LBT groups to educate the media about positive steps the government has taken, government's failure to meet international obligations, or if the state misrepresented the truth about conditions facing LBT people.

FAITH LEADERS

- LBT-friendly faith, and traditional community leaders must attend or participate in public events on LBT issues to show support and strengthen their messages, countering the misuse of religion to spread hate, violence and discrimination.
- LGBT groups must identify religious allies and empower/educate them to publicly denounce violence and discrimination against LBT people in the name of religion.

APPENDIX A: RESEARCH METHODOLOGY

APPROACH TO RESEARCH

The approach to this research was collaborative, careful, and led by the needs, perspectives and concerns of the partnering Asian LBT groups. Core research tools, which IGLHRC developed, were closely reviewed for usability, cultural sensitivity, and appropriateness of language (i.e., terminology, phrasing, definitions of sexual orientation and gender identity). Documenters were primarily LBT people – a few of whom were gay cisgender men. The majority of documenters had gone through their own experiences of violence in the past. Some teams asked non-LBT allies such as feminist human rights advocates or human rights lawyers to conduct interviews with stakeholders. For most LBT interviewees, the documentation process was eye-opening, as many had not named their experiences as violence and were unaware of their rights. Many also were breaking silences for the first time and saw their participation in the project as part of a collective effort to expose the violence and improve support services for LBT people.

RESEARCH DESIGN

The core research tools for this project included one long qualitative semi-structured questionnaire for interviews with LBT people,⁶⁹ and nine shorter qualitative semi-structured questionnaires for shorter interviews with stakeholders. Stakeholders were identified with the intention that the research would help tease out potential allies (those who already were or could become support systems for LBT people experiencing violence) and potential

threats (those who were opposed for personal or professional reasons to non-conforming gender and sexual orientation). Stakeholder questionnaires also gauged awareness of LBT issues and needs. Interview protocols included guidelines for getting informed consent, identifying safe interview locations, doing a proper “wrap-up” before concluding each LBT interview, offering respondents the chance to express how they felt about the interview, and providing interviewers the opportunity to offer follow-up support such as information about LBT-friendly and trusted counseling, legal or support group services that were aware of the project and available to provide needed interventions. Interviewers themselves were strongly discouraged from providing counseling or giving the impression that they had counseling expertise.

Country partners tested the final draft of the LBT questionnaire with the understanding that research team coordinators could adjust the questionnaire after documentation was underway. Questionnaires were translated from English to the languages of partnering countries. English language interviews were also conducted in Sri Lanka, Philippines, Malaysia and Pakistan.

Each country team agreed to conduct a minimum of 50 LBT interviews and 40 stakeholder interviews, including human rights NGOs/women’s advocates, mental health providers, medical professionals, lawyers and religious leaders, employers, educators, members of media, and government officials (e.g., parliamentary ministers, human rights commissioners, representatives of local police forces, etc.).

LBT interviewees were selected through snowballing recruitment, which involved conducting outreach to LBT networks, personal contacts, and LGBT organizations. Stakeholder interviewees in the public sphere (e.g. with mental health practitioners, educators, government officials) were approached through formal requests.

Identification of LBT interviewees for the semi-structured interviewees were not restricted to the prevailing identity-based categories (i.e., lesbian,

69 Some documentation teams found that they were the first people that LBT respondents were talking to about the issues in this research. Interviewers at first decided to allow respondents to talk freely and for as long as they needed without interruption. This resulted in interviews exceeding the two-hour limit agreed to by the research regional group and IGLHRC. To cut down on transcription time, most of the country teams began limiting questions on “coming out” and focused on narratives on violence.

bisexual, transgender or LBT), but also described the activities, emotional state of being, and allowed for the use of self-descriptors. The country samples attempted to ensure representation along different demographic criteria such as age, gender, ethnicity, religion, economic status, etc.

DOCUMENTATION PROCESS AND PROTOCOLS

Recorded interviews⁷⁰ were transcribed from the audio recordings and, where needed, translated into English. English was the common language between the different country research teams, with the IGLHRC Asia staff coordinating this project, and sometimes coordinating between the in-country documenters and their team coordinator.⁷¹

70 All interviews were recorded on electronic devices with the consent of interviewees. The investigators/documenters were regularly coached and monitored to ensure the security of the audio data, and the confidentiality of the interviewee's identity. When an interviewee did not wish the interview to be audio-recorded, a second person was required to attend the interview as recorder (again, with the consent of the interviewee). The second person recorded the interview as hand-written transcripts or detailed notes. If this option was also not possible, the interviewer took down handwritten notes (i.e., simultaneous note-taking and conducting the interview). In this case, it was essential that on completion of the interview, the interviewer immediately recorded the interview in as much detail as possible. For this project, interviews with LBT respondents were primarily electronically recorded. Interviews with stakeholders were either recorded electronically or as hand-written notes, particularly in situations where stakeholders were reluctant or fearful of supervisor and/or employer retribution, or concerned about possibility that they themselves may be "outed" (sexual orientation or gender identity revealed inadvertently or without permission) as LGBT. Electronic recording was suspended or not attempted with stakeholders when they became openly homophobic or transphobic, or only agreed to speak if there was no recorder. When interviewees responded non-verbally (gestures), documenters made notes in the transcripts/for transcribers to explain reasons or contexts for the non-verbal responses. Shortcut summaries of interviews were avoided.

71 Documenters on the Pakistan team did not transcribe interviews with khwajasaras that were conducted in Urdu. Transcribing is labor-intensive; trained, trustworthy, and LGBT friendly transcribers were severely limited in Lahore. Documenters themselves faced many challenges with transcribing, including, physically disabling health conditions

Country coordinators selected their own translators and transcribers, prioritizing the following criteria: trustworthiness, professional skills and availability. Trustworthiness was critical to ensure that language translators could handle sensitive material without breaking confidence while being comfortable working on an LBT project and familiar with concepts of violence. It's worth noting that even when IGLHRC made funding available so country teams could hire qualified translators, for some teams, security risks were too great (e.g., as one research coordinator said, "Money is not the issue.").⁷² These teams preferred known interlocutors who were not necessarily trained as translators but who were trustworthy and sensitive to the issues.

ETHICAL CONSIDERATIONS AND SUSTAINABILITY

The key ethical issues in this research were obtaining informed consent and the confidentiality of the participants' identities. These were strongly emphasized in the initial documentation training that IGLHRC conducted and the trainings subsequently delivered by country team coordinators. Confidentiality was not only mandated for ethical reasons but to minimize security risks from State authorities, members of media, violators in families and the interviewees' communities.

The investigators made initial contact through personal contacts or through members of the local community or LBT organizations. They introduced themselves and fully explained the objectives of the research. Informed consent was obtained by ensuring that all interviewees were fully briefed on the kind of questions that they would be asked, guaranteed confidentiality, and the option to exit from the interview process at any stage that they deemed was necessary. Interviews were conducted in a place where it was not possible for anyone to overhear what is being said,

and early onset of secondary trauma from conducting interviews. Less than 25 percent of transcripts from the total number of LBTQ interviews conducted were therefore used in the Pakistan country analysis or made available to IGLHRC.

72 This was the case for research teams in Sri Lanka and Pakistan.

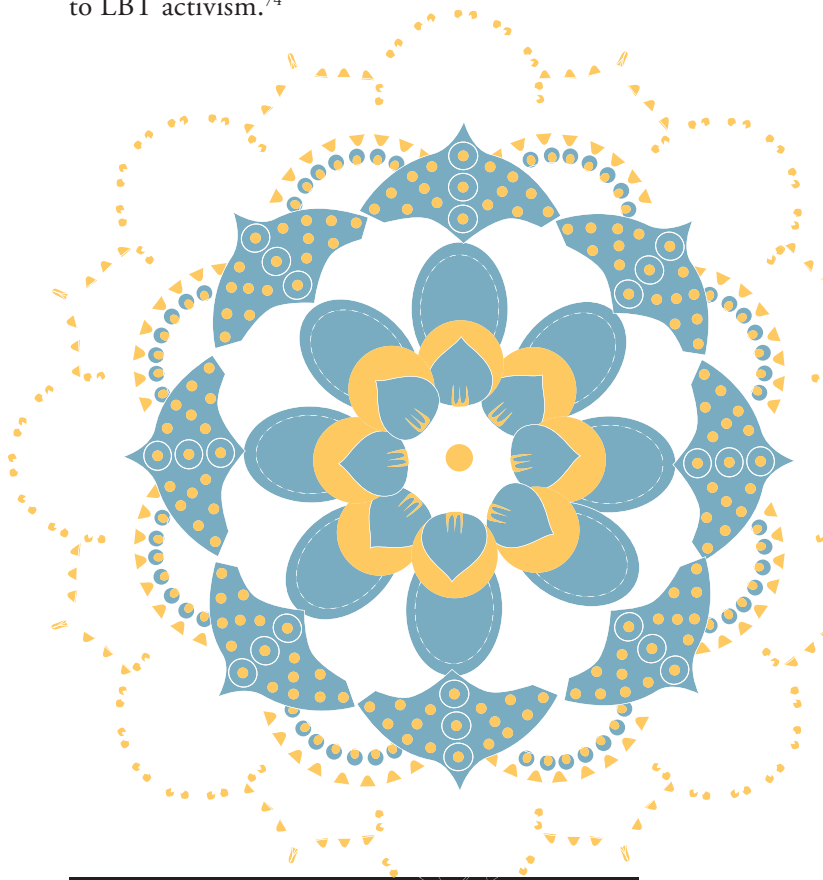
or in any way identify the purpose of the meeting. Safe times were identified, making sure that interviews were scheduled during the day or early evening hours. Interviews were conducted with one person at a time. Respondents' identities were not revealed or shared.

Data security was a critical concern and required carefully planned and implemented procedures to ensure the confidentiality and integrity of the data collected. Multiple copies of audio and written transcript files were maintained (such as on flash drives, external hard drives, and as hard copies), with security precautions taken for each. Each country team coordinator decided if the different storage devices were kept at different locations or with different members of the research team to minimize unauthorized access or harm to all storage devices kept in the same location. All data was backed up on external hard drives. Electronic and hardcopies of completed, transcribed, English-translated interviews were sent as encrypted files to IGLHRC for archival purposes. Data or information about the identity of the interviewees could not be shared with family members, partners of the documenters, or partners of IGLHRC staff.

The emotional and psychological wellness of researchers was critical for the sustainability of the work. For example, it was important to address emotional and psychological distress and researcher burnout, triggered at different stages of the project by repeated handling of research materials (interviewing, transcribing, analyzing, writing). Mental health interventions such as counseling were identified by each country coordinator – an LGBT crisis hotline in Japan, a feminist LGBT-friendly psychologist in Sri Lanka, an LGBT friendly social-worker in Malaysia, and a peer group support in Pakistan. All researchers were encouraged to maintain an interview diary/journal, keeping a record of their own thoughts and feelings about the interview and the research process. Here, too, confidentiality of interviewees and use of pseudonyms were required.⁷³

73 IGLHRC convened monthly country coordinator meetings via Skype and telephone. These meetings served as a

Each country team coordinator prepared an intervention strategy to be followed if respondents/interviewees were experiencing violence at the time of the interview, experienced violence because of the interview, or were triggered by recollections of violence for the interview and needed counseling support. The strategy included identifying trustworthy mental health professionals who were trained LGBT-friendly counselors and feminist psychologists who provided mental health counseling sessions as needed, often at little or no cost – with pro bono (voluntary professional services) offered as their contribution to LBT activism.⁷⁴



mechanism to monitor data gathering progress and troubleshoot challenges, while also providing a forum for cross-country exchanges about the challenges of carrying out the documentation, and opportunities for peer support. Quick regular check-ins via SMS and Facebook also helped keep us in touch. Wellness grants were available through IGLHRC for peer counseling training by in-country or regional experts.

74 The exception to this arrangement was the Pakistan research team whose team included professionals with counseling training. Members supported one another in the absence of reliable trustworthy outside support from mental health professionals in the city where the team was based, specifically with regard to LGBT sensitivity and confidentiality.

APPENDIX B: SUMMARY OF COUNTRY CONTEXTS

JAPAN

The general population in Japan would most likely not associate the terms “punitive” and “repressive” with the condition of LBT people. Two perspectives provide a different grasp of the Japan country condition. Research coordinator, Azusa Yamashita explains: “Most Japanese people know what’s appropriate to say in public. There’s a general political understanding among Japanese stakeholders [educators, lawyers, mental health professionals, NGOs] that LGBT rights are human rights. Even if they reject other minority groups, they won’t say that they reject LGBT people. They will say, yes bullying of transgender students is wrong. They accept that there are difficulties of being LGBT. Even general society, when you ask them, do you accept LGBT people, they will say, yes. But in their imagination, we don’t exist – maybe because they don’t fully comprehend LGBT people and they think LGBT people are out there somewhere but not in their family, their neighborhood, their workplace.”⁷⁵ At the same time, there is a powerful sense of family obligation and pressure from family to conform – not only on LBT children but all family members – to ensure uniformity with and conformity to a “standardized ideal” of what is considered an acceptable Japanese family unit. When there is discrimination and violence, LBT individuals have difficulty “assigning blame” and demanding accountability from an external entity – for example, the family, the employer, or the State. In this research, even when LBT respondents acknowledged that specific acts of violence and discrimination were a violation of their rights, there was an overarching sense of individual responsibility for having to handle the violations, converting a situation of social and structural violence to a problem of personal responsibility, and indicating that its “solution” rest with personal ability or in-

75 IGLHRC Skype conversation with Azusa Yamashita, July 10, 2013.

ability to handle suffering caused by violence. LBT people expressed a reluctance to rely on government-funded programs or interventions to alleviate the suffering caused by/impact of violence.

Harmful impact of laws and policies: Japan has no anti-sodomy laws or laws that criminalize homosexuality or same-sex relations, but there is no legal recognition of individuals, relationships and family units that do not conform to traditional concepts of family, gender roles and gender expression. This includes transgender people, officially categorized as people with Gender Identity Disorder (GID), who are ridiculed and discriminated against, and considered “defective” in the same way as lesbians and gay men. Cultural leaders and politicians rely on notions of “homogeneity,” which encourages mistreatment of transgender people in various sectors of society, often with impunity.

MALAYSIA

In January 2012, Malaysia’s coalition government scapegoated LGBT people as part of its election campaign against Malaysia’s opposition leader, Anwar Ibrahim, who had previously been charged for sodomy. Images of Anwar accompanied inflammatory slogans like, “Free sex gathering 901” and “Sodomy no matter what.” Other posters linked voting for the opposition with “free sex.” At the 2013 Universal Periodic Review of Malaysia, a stakeholder statement submitted by a coalition of Malaysian sexuality and gender rights groups to the United Nations Human Rights Council, explains: “These posters were intended to fuel hate and politicize LGBTIQ for political mileage by the existing ruling coalition government, Barisan Nasional (BN), and in particular by the ruling Malay party, UMNO.”⁷⁶ Even more disturbing are statements by Malaysia’s top leadership, including the Prime Minister, and the Deputy Prime Minister, calling gay people “deviant aspects of

76 “Malaysia: Human Rights Violation against Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Persons,” *Knowledge and Rights with Young People through Safe Spaces (KRYSS)*, March 2013, <http://voc.org.my/blog/wp-content/uploads/2013/03/coalition-of-SOGI-Malaysia.pdf>. The UPR stakeholder statement was submitted by KRYSS.

society,” urging parents to monitor “gay symptoms,” and declaring that gay people in Malaysia should be sent to State-funded rehabilitation centers.⁷⁷

PAKISTAN

In June 2011, the US embassy in Pakistan publicized an LGBT Pride event that it hosted at the embassy in Islamabad, setting off a chain of angry reactions from religious and political leaders across major cities. Jamaat-e-Islami, the largest Islamist group in the country, said that the embassy action was “social and cultural terrorism against Pakistan.”⁷⁸ A mob belonging to this group surrounded the embassy and threatened recriminations.⁷⁹ LGBT guests at the embassy event and their social networks of gay and lesbian individuals feared being hunted down by religious groups.⁸⁰

SRI LANKA

In September 2011, the lead article in Rivira, a Sri Lankan newspaper, entitled, “Violating Sri Lanka’s Penal Code: 24 Homosexual Centres to Open,”⁸¹ alleged criminal activity by homosexual organizations receiving HIV funding. In response, Sri

Lanka’s President, Mahinda Rajapaksa ordered the halt of condom and lubricant distribution and a special investigation on homosexual organizations “as to how these organizations are surreptitiously operating to destroy the culture, civility and morals of this country.”⁸² An email from LBT activists describes the fallout from the State’s response: “The environment has turned hostile and regressive towards NGOs and civil society in general... many NGO’s have been forced to shut down and if they continue to operate they are compelled to reveal information about their activities and sources of funds to the Ministry of Defense. Also, gay and lesbian issues have faced intense scrutiny and negative backlash causing a number of activists to flee the country or go underground. Media coverage has been very negative and destructive.”⁸³

Harmful impact of laws and policies: Malaysia, Pakistan and Sri Lanka all still implement remnants of old British colonial law, including ancient Penal Code provisions that broadly criminalize “sexual acts against the order of nature” (anal and oral sex, same-sex relations, and bestiality). These provisions are often referred to as “sodomy laws” (see Appendix C) and subject violators to severe penalties. In addition, Pakistan and Malaysia have sharia or Islamic laws that also penalize homosexuality, cross-dressing, non-conforming gender expression, and any form of intimacy deemed to be “sexually inappropriate” and therefore defying Islamic teachings (see Appendix C). The presence of a dominant religion and laws that criminalize homosexuality and transgenderism tend to create less protection for women in general and more risks for lesbians, bisexual and gender variant people. Unlike in Japan and Philippines, governments of Malaysia and Sri Lanka also impose internal security (“anti-terrorism”) laws, which grants the police and security forces broad powers to interpret and enforce laws,

77 Anna Leach, “16,000 Parents and Teachers Told to Curb LGBT Behavior in Malaysia,” *Gay Star News*, February 4, 2013, <http://www.gaystarnews.com/article/16000-parents-and-teachers-told-curb-lgbt-behavior-malaysia040213>; Anna Leach, “Malaysian Deputy Prime Minister Says LGBT People Need Counseling,” *Gay Star News*, April 5, 2012, <http://www.gaystarnews.com/node/1847>; Anna Leach, “LGBTs Are Deviant Aspects of Malaysia Says Prime Minister,” *Gay Star News*, June 27, 2012, <http://www.gaystarnews.com/article/lgbts-are-deviant-aspects-malaysia-says-prime-minister270612>; Anna Leach, “Politician Calls For Gay Rehab Center in Malaysia,” *Gay Star News*, March 22, 2012, <http://www.gaystarnews.com/node/1613>.

78 “US Embassy In Islamabad Accused Of ‘Cultural Terrorism’ For Holding Gay Rights Event,” *Fridae*, July 4, 2011, <http://www.fridae.asia/newsfeatures/2011/07/04/10982.us-embassy-in-islamabad-accused-of-cultural-terrorism-for-hosting-gay-rights-event>.

79 Peter J. Smith, “Pakistanis Denounce US Embassy’s Gay Rights Party as ‘Cultural Terrorism,’” *Life Site News*, July 26, 2011, <http://www.lifesitenews.com/news/pakistanis-denounce-us-embassys-gay-rights-party-as-cultural-terrorism/>.

80 IGLHRC conversation with O, Pakistan on July 19, 2011.

81 Sinhala language online newspaper, Rivira, September 9, 2011, <http://www.rivira.lk/2011/09/11/janaindex.htm>.

82 Rivira, September 9, 2011, pp. 6, <http://www.rivira.lk/2011/09/11/janaindex.htm>.

83 Email received from WSG, July 9, 2013. Also see “Coalition for Sexual Rights Joint UPR Submission Sri Lanka 2012,” CREA, *Equal Ground, The Sexual Rights Initiative and The Women’s Support Group*, November 2012, http://lib.ohchr.org/HRBodies/UPR/Documents/Session14/LK/JS10_UPR_LKA_S14_2012_JointSubmission10_E.pdf.

and also deny permits for even peaceful marches, rallies, and gatherings. Law enforcement agents use these laws to disperse crowds and detain people for unnecessary questioning without due process. In this context, LBT persons are particularly vulnerable to physical, verbal and sexual violence by police, officers of state religious departments, and members of security forces. This not only denies LBT people their right to physical integrity and security, but also the right to freedom of expression, the right to practice their religion, and the right to equal protection of the law. Raids of private homes by religious officers and police bans of LBT human rights events deny freedom of association and peaceful assembly, and constitute an invasion of privacy.

PHILIPPINES

Compared to Malaysia, Sri Lanka and Pakistan, the Philippines to all appearances, struggles with fewer explicitly State-endorsed homophobic and transphobic incidents of violence. In fact, the Philippines country chapter does not document State violence against LBT people as much as non-State violence. However, a 2011 joint stakeholder shadow report⁸⁴ for the UN Human Rights Committee's review of the Philippines' implementation of the International Covenant on Civil and Political Rights (ICCPR), lists the state's failure to address repeated violations of LBT people's safety and security, including: the humiliating treatment of transgender women by state passport offices; and several so-called jealousy-motivated killings of lesbians by men "resentful of their girlfriend's relationship with a lesbian." One of these incidents involves multiple perpetrators and multiple homicides where the suspects kill a woman and her family because they are angered by her "reported relationship with a lesbian."⁸⁵

84 "Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines," IGLHRC and coalition partners, October 14-November 4, 2011, <http://www.iglhrc.org/sites/default/files/569-1.pdf>. Submission to the 103rd session of the Human Rights Committee October 14-November 4, 2011.

85 As footnoted in the Philippines 2012 ICCPR shadow report. See Hernan dela Cruz, "Police Hunt Zamboanga del Sur

Harmful impact of laws and policies: In the Philippines, there is no anti-sodomy law but several morality and public order laws – from anti-vagrancy to grave scandal laws – are used to target LBT people for police harassment, intimidation, arbitrary arrest and detention. Laws against kidnapping, illegal detention and human trafficking ("crimes against liberty") are misused against butch lesbians and transgender men when families disapprove of their relationships, are not successful in breaking up couples, or prevent them from eloping. Catholic priests encourage families to reject and discriminate against LBT people, including their own children and siblings. The Philippines Catholic Church has successfully dissuaded the Philippines Congress from passing an LGBT anti-discrimination bill for the last fourteen years.

CONTRADICTIONS BETWEEN NATIONAL AND INTERNATIONAL COMMITMENTS

On one hand, government promises made at the international level produced little or no advances on LGBT equality at the national level. On the other hand, positive developments at the national level were not consistent with UN positions on sexual orientation and gender identity. Three striking examples of this occurred in Philippines, Pakistan, and Japan.

- **Philippines:** In 2011, the Philippines Supreme Court ruled that Ang Ladlad, an LGBT political party, had the right to participate in national elections,⁸⁶ striking down the National Election Commission's earlier rejection of the group's application on

Killers," *Inquirer*, September 28, 2011, <http://newsinfo.inquirer.net/66815/police-hunt-zamboanga-del-sur-killers>. For the full report see "Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines," *IGLHRC*, October 10, 2012, <http://www.iglhrc.org/our-publications/reports/human-rights-violations-philippines>.

86 Elizabeth Yuan, "Philippines Gay Party On Ballot For The First Time," *CNN World*, May 12, 2010, http://articles.cnn.com/2010-05-08/world/philippines.politics.gay_1_human-rights-danton-remoto-political-rights?_s=PM:WORLD.

grounds that it was immoral for promoting homosexuality.⁸⁷ In 2012, Leila Delima, a top government official in the Philippines Justice Ministry declared before the United Nations Human Rights Council that the Philippines would lead on LGBT rights in Asia.⁸⁸ In 2013, police sensitization trainings have been taking place across major cities in the Philippines.⁸⁹ Despite these positive events, the Philippines government consistently abstains from voting on LGBT protections at the UN and has refused for the past thirteen years to pass an LGBT Anti-Discrimination Bill.⁹⁰

- **Pakistan:** In 2009, the Supreme Court of Pakistan ordered welfare benefits to be extended to hijra and khwajasara (transwomen) communities, and that a third gender legal category be created – paving the way for transwomen in Pakistan to stand for local elections.⁹¹ It is difficult to predict what positive outcomes the Court's rulings on third gender rights will have on lesbian, gay and bisexual people in Pakistan when juxtaposed against the Pakistan government's consistent and vociferous opposition to any LGBT-re-

lated initiatives at the United Nations, as well as the presence of Article 377 in the Pakistan Penal Code (the British colonial anti-sodomy law) taken in conjunction with the presence of sharia penalties for sexual relations outside heterosexual marriage.

- **Japan:** In 2012, for the first time, the government of Japan opened a national crisis telephone hotline for LGBT people⁹² and extended the services of a national suicide network to LGBT youth.⁹³ The government of Japan also assented to all recommendations on sexual orientation and gender made during the 2011 Universal Periodic Review by the Human Rights Council⁹⁴ and the 2013 recommendations of the Committee on Economic, Social and Cultural Rights (CESCR).⁹⁵ Japan also consistently votes in favor of LGBT protections at the UN General Assembly. Yet, nothing has been done to hold high profile Japanese politicians accountable, like the governor of Tokyo who publicly stigmatized LGBT people in Japan and ignores Japanese and international LGBT demands for an apology.⁹⁶ A National Human Rights Commission has not been established.

87 Kristine Servando, "Comelec says gay party 'immoral,'" *ABS CBN News*, November 12, 2009, <http://www.abs-cbnnews.com/lifestyle/11/12/09/comelec-says-gay-party-immoral>.

88 "UN HRC Identifies LGBT Rights Violations In Philippines," *Outrage Magazine*, October 18, 2012, <http://outragemag.com/online/un-hrc-identifies-lgbt-rights-violations-in-ph/> and "Philippines: UN Human Rights Committee Identifies LGBT Rights Violations (press release)," IGLHRC, October 17, 2012, <http://www.iglhrc.org/content/philippines-un-human-rights-committee-identifies-lgbt-rights-violations>.

89 "Special Report: Philippines National Police Undergo LGBT Sensitivity Workshops Part II," *The New Civil Rights Movement*, June 2, 2013, <http://thenewcivilrightsmovement.com/special-report-philippines-national-police-undergo-lgbt-sensitivity-workshops-part-ii/politics/2013/06/02/67925>.

90 "Philippines: UN Human Rights Committee Identifies LGBT Rights Violations (press release)," IGLHRC, October 17, 2012, <http://www.iglhrc.org/content/philippines-un-human-rights-committee-identifies-lgbt-rights-violations>.

91 "In Pakistani transgender political candidates, history and hope," *Four Two Nine*, April 1, 2013, <http://dot429.com/articles/1802-in-pakistani-transgender-political-candidates-history-and-hope>.

92 "Beyond Invisibility: Great East Japan Disaster And LGBT In Northeast Japan," *FOCUS Vol. 69, Asia Pacific Human Rights Information Center*, September 2012, <http://www.hurights.or.jp/archives/focus/section2/2012/09/beyond-invisibility-great-east-japan-disaster-and-lgbt-in-northeast-japan.html>.

93 Suicide.org website, <http://www.suicide.org/hotlines/international/japan-suicide-hotlines.html>.

94 United Nations, 22nd session of Human Rights Council, Universal Periodic Review of Japan, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/JPSession14.aspx>.

95 United Nations, 50th session of Committee on Economic, Social and Cultural Rights, Concluding Observations for Japan (E/C.12/JPN/CO/3 (2013), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fJPN%2fCO%2f3&Lang=en.

96 "Tokyo LGBT Community And Supporters Protest Ishihara's Homophobic Comments," *Japan Subculture Research Center*, January 17, 2011, <http://www.japansubculture.com/tokyo-lgbt-community-and-supporters-protest-ishihas-homophobic-comments/>.

APPENDIX C: CURRENT LAWS THAT RELATE TO LBT PEOPLE IN 5 ASIAN COUNTRIES

HOW IS VIOLENCE AGAINST WOMEN DEFINED? WHICH LAWS PROHIBIT VIOLENCE AGAINST WOMEN?

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
No national law in Japan explicitly prohibits violence against women. Specific offenses such as stalking, rape and domestic violence are dealt with under the Penal Code or separate laws relating to these types of violence.	No federal or national law in Malaysia explicitly prohibits violence against women. Specific offenses such as domestic violence and rape are dealt with under the Penal Code or the law prohibiting spousal violence.	There is no national law in Pakistan that defines or prohibits violence against women. Specific offenses such as sexual assault and rape are dealt with under the Penal Code.	The Philippines Anti-Violence Against Women and Their Children Act of 2004 (Republic Act 9262) refers to violence against women as a single or series of acts against a woman who is the wife of the perpetrator, former wife, or sexual or dating partner, or with whom he has a common child. http://www.lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html	There is no national law in Sri Lanka that explicitly prohibits violence against women. Specific offenses such as spousal violence and rape are dealt with under the Penal Code.

HOW IS DOMESTIC VIOLENCE DEFINED? WHICH LAWS PROHIBIT DOMESTIC VIOLENCE?

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
The Japan Act on the Prevention of Spousal Violence and the Protection of Victims (Act No. 31) of 2001 defines domestic violence as bodily harm by one spouse (illegal attacks, threats, or words and deeds) that cause equivalent psychological or physical harm to the other. The law applies to legally registered marriages, annulled marriages (where divorce has been granted), and de facto state of marriage (not legally registered). http://www.gender.go.jp/e-vaw/law/sv.pdf Domestic violence includes stalking. The Anti-Stalking Act (Act No. 81) of 2000 defines stalking as repeated acts against the same individual, which violate the targeted individual's "physical safety, peace at home, or honor, or limits freedom of movement, and are perpetrated against a male or female spouse, cohabitant, or acquaintance, where the acts are carried out "to satisfy one's grudge when the romantic feeling is not fulfilled." Acts of stalking are: ambush, surveillance, telling someone they are being watched, unwanted repeated calling/ faxing/ emailing, and mailing objects meant to intimidate.	The Malaysia Domestic Violence Act enacted in 1994 and amended in 2011 defines domestic violence as the commission of the following acts against a woman or man by a spouse, former spouse, or any other family member: willful threats of physical injury, acts causing or resulting in physical injury, coercion, arbitrary confinement, and property damage. The law is limited to married cisgender, heterosexual couples. Children and incapacitated adults are also protected under this law. http://www.agc.gov.my/Akta/Vol.%2011/Act%20521.pdf	There is no law in Pakistan on domestic violence.	The Philippines Anti-Violence Against Women and Their Children Act of 2004 defines domestic violence as a separate offense against a woman and/or her child, whether the child is legitimate or illegitimate, within or without the family abode. Acts of domestic violence include battery, assault, coercion, harassment, arbitrary deprivation of liberty, stalking, etc., and resulting in physical, sexual, and psychological harm, or suffering, or economic abuse. http://cedaw-seasia.org/docs/DomesticViolenceLegislation	Domestic violence is not defined as a separate offense. The Sri Lanka Prevention of Domestic Violence Act No. 34 of 2005 limits definition of domestic violence to offences in Schedule 1 of Chapter XVI of the Penal Code such as grievous hurt, causing miscarriage, etc. and emotional abuse which is defined in provision 23(b). http://www.documents.gov.lk/Acts/2005/Prevention%20Act%20No.%2034%20of%202005/H%2022927%20Prevention%20(E).pdf

HOW IS GENDER-BASED VIOLENCE DEFINED? HOW IS GENDER DEFINED?

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
No law in Japan defines gender-based violence.	No law in Malaysia defines gender-based violence. But the Equality Clause (Article 8) of the Malaysian Constitution includes gender as a prohibited ground for discrimination. http://www.malaysianbar.org.my/gender_issues/gender_equality_under_article_8_human_rights_islam_and_feminisms_by_salbiah_ahmad.html	There are no laws in Pakistan that define gender-based violence.	The Philippines Magna Carta of Women (RA 9710) defines violence against women as any act of gender-based violence that results in physical, sexual or psychological harm of suffering to women, including threats, coercion or arbitrary deprivation of liberty. This definition is similar to the Anti Violence Against Women and Their Children Act of 2004 (RA 9262). http://www.lawphil.net/statutes/repacts/ra2009/ra_9710_2009.html RA 9208, the Anti Trafficking in Persons Act of 2003 also covers gender-based violence. Gender equality is defined in the Magna Carta of Women (RA 9710) as the principle asserting the equality of men and women and their right to enjoy equal conditions realizing their full human potentials to contribute to and benefit from the results of development, and with the State recognizing that all human beings are free and equal in dignity and rights.	Gender is not specifically defined in any Sri Lankan law. Some laws that prohibit gender-based violence are laws against rape, sexual abuse, trafficking, incest, and digital violence.

HOW IS SEXUAL HARASSMENT DEFINED? WHICH LAWS PENALIZE SEXUAL HARASSMENT?

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
The Japanese Ministry of Health and Labor Ministerial Ordinance regarding Equal Opportunity and Treatment between Men and Women in Employment (Ordinance No. 133) of 2014 defines sexual harassment as “sexual remarks and acts that take place in workplace against worker’s will.” According to the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment (Act No. 113) of 1972 sexual harassment in the workplace is a punishable offense.	In 2011, the Malaysia Employment Act was amended to include provisions relating to sexual harassment in employment settings. The amendments have been rejected “as significantly flawed” by civil society groups. In 1999 the Ministry of Human Resources drafted a Voluntary Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace, which outlined employer responsibilities to ensure a safe and healthy working environment. The Code of Practice has not been included in amendments to the Malaysia Employment Act. http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf	The Pakistan Protection Against Harassment Of Women At The Workplace Act of 2010 prohibits sexual harassment and provides a complaints mechanism for sexual harassment in employment settings. Under this Act, sexual harassment is defined as “any unwelcome sexual advance, request for sexual favors, or other verbal or written communication or physical conduct of a sexual nature, or sexually demeaning attitudes, causing interference with work performance, or creating an intimidating, hostile, or offensive work environment.” Any attempt to punish an individual for refusing to comply with sexual requests or requests that are made as a condition of employment are included in the definition of sexual harassment in the workplace. http://www.qua.edu.pk/pdfs/ha.pdf	RA 7877 or the Philippines Anti Sexual Harassment Act of 1995 prohibits sexual harassment, which is defined as a sexual favor made as a condition in the hiring, employment, re-employment or continued employment of an individual; or the granting of favorable compensation, promotions or privileges; or when employee’s refusal to grant sexual favor results in limiting, segregating or classifying the employee in a way that would discriminate, deprive or diminish employment opportunities, violate labor laws, or create an intimidating, hostile, offensive environment for employee. http://ecop.org.ph/downloads/presentations/march20/RA-7877-Anti-Sexual-Harassment-Law.pdf	Section 345 of the Sri Lanka Penal Code (Amendment) 22 of 1995, and Act 16 of 2006 prohibit sexual harassment, which is defined as “unwanted sexual advances by word or action.” Although sexual harassment is a punishable offence, complaints are rare. State/ public employers have yet to put in place mechanisms to address sexual harassment. Private companies have sexual harassment policies but these are not implemented.

HOW IS SEXUAL ASSAULT DEFINED? WHICH LAWS PROHIBIT SEXUAL ASSAULT?

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
Covered under the Rape Law 177 and Quasi Rape Law 178 of the Japan Penal Code.	Covered under the laws prohibiting rape and unnatural offences under the Malaysian Penal Code.	Sections 354, 354A and 355 prohibit sexual assault under the Pakistan Penal Code. Definitions of sexual assault are as follows: Section 354: "assault or criminal force to woman with intent to outrage her modesty." Section 354A: "assault or criminal force to woman and stripping her of her clothes." Section 355: "assault or criminal force with intent to dishonor person, otherwise than on grave provocation."	Covered under Philippines Anti Rape Law of 1997.	Categorized as grave sexual abuse and penalized under Sri Lanka Penal Code (Amendment) 22 of 1995, Para 365(b), which covers sexual acts that don't fall under the rape definition. http://www.aidscontrol.gov.lk/web/Web%20uploads/Policy%20or%20Law/Penal%20Code%20(Amendment)%20Act,%20No.%2022%20of%201995.pdf

HOW IS STATUTORY RAPE DEFINED? WHICH LAWS PROHIBIT STATUTORY RAPE?

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
Article 177 of the Japan Penal Code prohibits sexual intercourse with a girl below 13 years of age, where force, threats or intimidation are present. http://www.cas.go.jp/jp/seisaku/hourei/data/PC_2.pdf	Section 375 (g) of the Malaysia Penal Code prohibits sex with a girl under 16 years of age, with or without her consent. http://www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf	Section 375 (v) of the Pakistan Penal Code prohibits sexual intercourse with a girl under age 16, regardless of her consent. http://www.pakistani.org/pakistan/legislation/1860/actXL-Vof1860.html	Article 266-A of the Philippines Anti Rape Law (RA 8353) of 1997 defines statutory rape as sexual intercourse with a girl below 12 years where force, threat or intimidation are present but immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. http://lexoterica.wordpress.com/2011/07/20/june-2011-philippine-supreme-court-decisions-on-criminal-law-and-procedure-2/	Section 363 (e) of the Sri Lanka Penal Code (Amendment) No. 22 of 2005 prohibits sex with a girl below age 16 regardless of consent. The exception is if the girl is over 12 and married to a Muslim man (and not judicially separated from him).

HOW IS RAPE DEFINED? WHICH LAWS PROHIBIT RAPE?

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
Articles 177 and 178 of the Japan Penal Code (Act No.45) of 1908 prohibit rape. http://www.cas.go.jp/jp/seisaku/hourei/data/PC_2.pdf Article 177 defines rape as sexual intercourse with a female not less than 13 years of age, where her consent was forced through assault or intimidation. Article 178 defines forcible indecency or “quasi rape” as an indecent act forced upon a male or female by taking advantage of loss of consciousness or inability to resist, or by causing a loss of consciousness or inability to resist; or sexual intercourse with a female by taking advantage of a loss of consciousness or inability to resist, or by causing a loss of consciousness or inability to resist. Article 178 defines gang rape as above but perpetrated by two or more persons.	Sections 375 and 376 of the Malaysia Penal Code prohibit rape, which is defined as (penile vaginal) sexual intercourse performed by a man against a woman against her will, without her consent, and where her consent was obtained under fear of hurt or death, or where her consent is obtained under false pretext that the offender is lawfully married to her, or where she is unable to understand the nature and consequences of giving consent, and/or where consent is obtained by abuse of authority. Rape with an object or not involving penile-vaginal penetration is not considered rape by definition but as an “unnatural offence.” Section 377(c) of the Penal Code prohibits carnal intercourse against the order of nature on another person or persons (man or woman) without consent, or against the will of the other person(s), or by putting the other person(s) in fear of death or hurt. http://www.wccpenang.org/rape/law-on-rape/ http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf	Section 375 of the Pakistan Penal Code (Act XLV) of 1860 prohibits rape, which is defined as sexual intercourse with a woman against her will and without her consent, or where consent has been obtained under fear of hurt or death. http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html The above definition of rape is based on the 2006 amended rape law under the Women’s Protection Act. Prior to that, rape was defined by the Hudood Ordinance of 1979, enacted under former President Zia-ul-Haq, and carried a high burden of proof, requiring four male witnesses in order to prove “fornication by force.” Absent this level of proof, a woman was convicted for “adultery or fornication with consent.” http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord7_1979.html	Republic Act No. 8353 or the Philippines Anti Rape Law of 1997 prohibits rape, which is defined as any act of sexual assault where penis is inserted into another person’s mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person and under the following circumstances: through force, threat, or intimidation; when the offended party is deprived of reason or otherwise unconscious; by means of fraudulent machination or grave abuse of authority; when offended party is under 12 or is demented. http://pcw.gov.ph/law/republic-act-8353	Section 363 of the Sri Lanka Penal Code (Amendment) 22 of 1995 prohibits rape, which is defined as (penile-vaginal) sexual intercourse that a man has with a woman without her consent, if consent is obtained through force or threat of harm or death to the woman, or if the man deceives her into thinking that he is her lawful husband. Rape definition also applies to divorced or judicially separated couples but not if the man is still legally married to the woman. http://www.aidscontrol.gov.lk/web/Web%20uploads/Policy%20or%20Law/Penal%20Code%20(Amendment)%20Act,%20No.%2022%20of%201995.pdf

IS RAPE OF A SEX WORKER PROHIBITED? WHICH LAWS PENALIZE RAPE OF A SEX WORKER?

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
Theoretically, in Japan, rape of a sex worker is covered under Article No. 177 (anti rape law) of the Penal Code but is difficult to prove. In cases involving rape of sex workers, courts have ruled that “victims did not try hard enough to avoid rape or fight back.”	Sex work is criminalized in Malaysia, which makes it difficult for sex workers to report rape and seek legal redress.	There is no law in Pakistan that addresses sex worker rape.	There is currently no law in the Philippines, prohibiting rape of a sex worker.	Technically, in Sri Lanka, rape of a sex worker is covered by the Anti-Rape Law but is hard to prove since the sexual relations of sex workers are presumed to be consensual.

IS MARITAL RAPE PROHIBITED? WHICH LAWS PENALIZE MARITAL RAPE?

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
The current anti-rape laws of Japan do not prohibit marital rape.	Amended Section 375A of the Malaysia Penal Code prohibits marital rape, which is defined as “any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife in order to have sexual intercourse with his wife.” However, an exception to the marital rape amendment remains in Section 376, which states, “Sexual intercourse by a man with his own wife by a marriage which is valid under any written law for the time being in force, or is recognized in Malaysia as valid, is not rape.” http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf	No laws in Pakistan prohibit marital rape.	The Anti Rape Law (RA 8353) should cover marital rape. However, Article 266-C of the Philippines Anti Rape Law considers rape a pardonable offense where “the criminal act can be extinguished” if the perpetrator is the husband and there is forgiveness by the wife.” Rape is recognized and as such prohibited when the marriage is void ab initio. http://www.chanrobles.com/republicactno8353.htm# . UuCWKrSibcc	Section 363(a) of the Sri Lanka Penal Code Amendment No. 22 of 2005 prohibits marital rape. Under this law, marital rape is limited to and recognized only in cases of judicial separation and not in cases where the marriage is still currently legal. The law does not apply to de facto couples (i.e., marriage is not legally registered).

IS FORCED MARRIAGE PROHIBITED? WHICH LAWS PENALIZE FORCED MARRIAGE?

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
There are no laws in Japan that criminalize forced marriage. However, Article 24 of the Constitution of Japan states that marriage is based on mutual consent by both sexes. http://www.kantei.go.jp/foreign/constitution_and_government/frame_01.html Article 742 of the Civil Code (Act No 89 of 1896, enacted in 1898) states that marriage is void "if one of the parties has no intention to marry due to mistaken identity or other cause."	Except for the legal age of marriage, there are no laws prohibiting forced marriage in Malaysia.	By Presidential Order of 2011, forced marriage has been prohibited and is now a punishable offense under the Pakistan Penal Code. This reverses the 1979 Hudood Ordinance, which repealed the Penal Code and permitted forced marriage under sharia law. http://www.na.gov.pk/uploads/documents/1329729400_262.pdf	No law on the books prohibits forced marriage. However, Article 2 of the Philippines Family Code of 1987 states that one of the requisites of marriage is consent, and that consent must be given in the presence of the solemnizing officer. http://www.wedding-satwork.com/culture_laws_familycode01.shtml	Marriage below age 18 is considered void ab initio for non-Muslims in Sri Lanka. Except for the age condition, forced marriage is not penalized as such.

WHAT IS THE AGE OF SEXUAL MAJORITY? IS IT DIFFERENT FOR GIRLS AND BOYS?

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
Article 731 of the Japan Civil Code stipulates that marital age is 16 for girls and 18 for boys. http://www.japanese-lawtranslation.go.jp/law/detail/?ft=2&re=01&dn=1&y0=%E6%B0%91%E6%B3%95&x=0&y=0&ia=03&ky=&page=4 Under Article 176 of the Penal Code, sexual age of consent is 13 for both girls and boys, and forcible rape or acts of indecency on girls or boys under age 13 are criminalized. http://www.cas.go.jp/jp/seisaku/hourei/data/PC_2.pdf The Child Welfare Act states that anyone below age 18 is considered a child. http://eiyaku.hounavi.jp/taiyaku/s22a16401.php	Malaysia has a dual legal system. Section 10 of the Malaysia Law Reform Marriage And Divorce Act of 1976, states that non-Muslim girls in Malaysia between the ages of 16 and 18 can marry with the licensed authorisation of the Chief Minister. Marriage for non-Muslims under age 16 is prohibited. Section 8 of the Islamic Family Law (Federal Territories) Act of 1984 states that for Muslims, the minimum age of marriage is 16 years for girls and 18 for boys, with an exception that permits Muslim girls and boys below these ages to marry with the Sharia Court's consent. http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf The Child Act of 2001 defines a child as a person under 18 years of age. http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf	The age of sexual majority in Pakistan is confined to consent within cisgender, heterosexual, legally registered marriage. The Majority Act of 1875 determines age of majority or legal age for sexual consent as 18 for both women and men. http://www.albarrtrust.com/Al%20Baar%20Web/SCAN%20RULES/Majority%20Act%201875.pdf The Child Marriage Restrain Act of 1929 stipulates the marital age as 18 for boys and 16 for girls. Under Section 496B of the Hudood Ordinance of 1979, which is still in effect, pre-marital and extra marital sex are prohibited and punishable, regardless of age of consent.	RA 6809 of the Philippines Family Code lowered the age of consent from age 21 to 18 for both girls and boys. http://www.chan-robles.com/repulicactno6809.htm#.UtzDFawraY Article 337 of the Revised Penal Code indicates that sex with a woman under age 18 is treated as a crime of seduction if the partner is in a position of authority, such as a priest, household worker, domestic worker, guardian, teacher. http://www.ageofconsent.com/philippines.htm	Age of consent in Sri Lanka is 16 for girls and boys. The Gross Indecency provision of Section 365(a) of the Penal Code stipulates that age of consent is below 16 for boys having same sex relations if one partner is over 18.

ARE SAME-SEX SEXUAL RELATIONS EXPLICITLY CRIMINALIZED, AND IF SO, FOR BOTH MEN AND WOMEN, OR ONLY FOR MEN?

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
Same-sex relations are not criminalized in Japan.	Section 377A of the Malaysia Penal Code criminalizes “carnal intercourse against the order of nature,” which is defined as “Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person.” Religious (sharia) law also criminalizes same sex sexual relations between men (liwat) and between women (musahaqah). Each of the 14 states and Federal Territory of Kuala Lumpur outline prohibitions and punishment under different sections of their state’s sharia law.	Section 377 of the Pakistan Penal Code criminalizes “carnal intercourse against the order of nature,” which the state interprets primarily as anal sex and bestiality (sex with an animal). This law applies to same sex relations between men and between women, where penetration can be established. There are no known prosecutions under Section 377. http://www.pakistani.org/pakistan/legislation/1860/actXL-Vof1860.html.	In the Philippines, sexual relations between people of the same sex is not prohibited provided they do not violate provisions of the law that prohibit violence and force that amount to sexual assault, or sex in public, or sex under scandalous circumstances amounting to grave scandal, or sex with a minor which amounts to child abuse.	Section 365A of the Sri Lanka Penal Code (Amendment) No. 22 of 2005 criminalizes same-sex relations for both men and women. http://www.aidscontrol.gov.lk/web/Web%20uploads/Policy%20or%20Law/Penal%20Code%20(Amendment)%20Act,%20No.%2022%20of%201995.pdf

DOES THE CONSTITUTION INCLUDE AN EQUALITY CLAUSE/NON-DISCRIMINATION CLAUSE?

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
Article 14 of the Constitution of Japan states, “All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.” http://www.kantei.go.jp/foreign/constitution_and_government/frame_01.html	Article 8 of the Malaysian Constitution defines equality as “there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.” http://www.agc.gov.my/images/Personalisation/Buss/pdf/Federal%20Consti%20(BI%20text).pdf	Article 25 of the Pakistan Constitution declares equality and prohibits discrimination, including on the basis of sex. http://www.pakistani.org/pakistan/constitution/part2.ch1.html#f32	Article 3, Section 1 of the revised Philippine Constitution of 1987 states, “no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” http://www.lawphil.net/consti/cons1987.html	Chapter 3, Article 12 (2) of the 1978 Constitution of Sri Lanka defines equality as “no citizen shall be discriminated on the grounds of race, religion, language, caste, sex, political opinion, place of birth, or anyone of such grounds.” http://www.supremecourt.lk/images/stories/supreme_court/constitution17th.pdf

DOES THE CONSTITUTION ALLOW FOR RELIGIOUS LAWS TO OVERRIDE SECULAR LAWS?

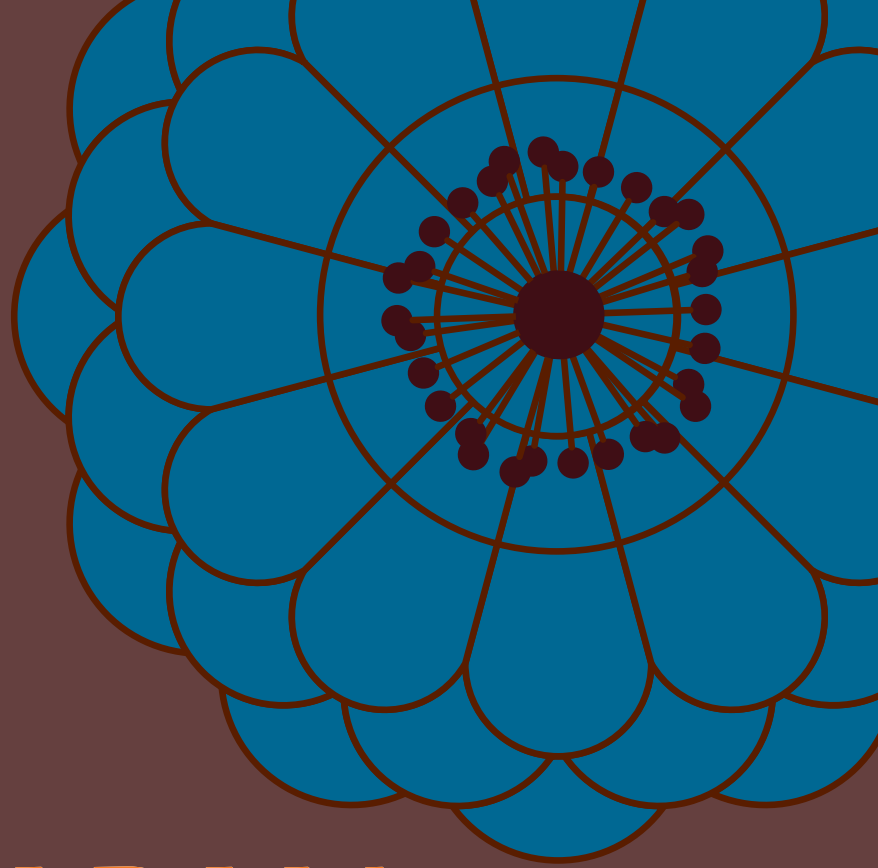
JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
Article 20 of the Constitution of Japan states, “No religious organization shall receive any privileges from the State, nor exercise any political authority ... The State and its organs shall refrain from religious education or any other religious activity.” http://www.kantei.go.jp/foreign/constitution_and_government/frame_01.html	The Malaysian Constitution states that all laws that contravene the Federal Constitution “must be cancelled as the Federal Constitutions is the highest law of the land.” However, Malaysia has a dual legal system. Sharia (Islamic) law applies to all matters relating to Muslims – marriage, divorce, religious observances, sexual relations, gender expression, marital age, etc.	The Objectives Resolution annexed to the Constitution of Pakistan and Article 277 of the Constitution stipulate that all laws must comply and align with the Quran and Sunnah (practices of Prophet Muhammad). http://www.pakistani.org/pakistan/constitution/annex_objres.html Article 277 (1) states “All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.” http://www.pakistani.org/pakistan/constitution/part9.html	Article 2, Section 6 of the Philippines Constitution states that separation of Church and State shall be inviolable. http://www.lawphil.net/consti/cons1987.html The Presidential Decree 1083, also known as Code of Muslim Personal Laws of the Philippines, stipulates that where there is conflict between secular laws and Muslim Personal Laws, the “latter shall be construed to carry out the former.” http://www.chanrobles.com/presidentialdecreeno1083.htm#.UuCeErSIbCc	Sri Lanka has a dual legal system. The Marriage And Divorce Muslim Act of 1951 allows Muslim law to override secular law. http://www.srilankalaw.lk/revised-statutes/volume-iv/728.html

WHICH LAWS INCLUDE OR SPECIFICALLY PROHIBIT VIOLENCE AND/OR DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY (SOGIE)?

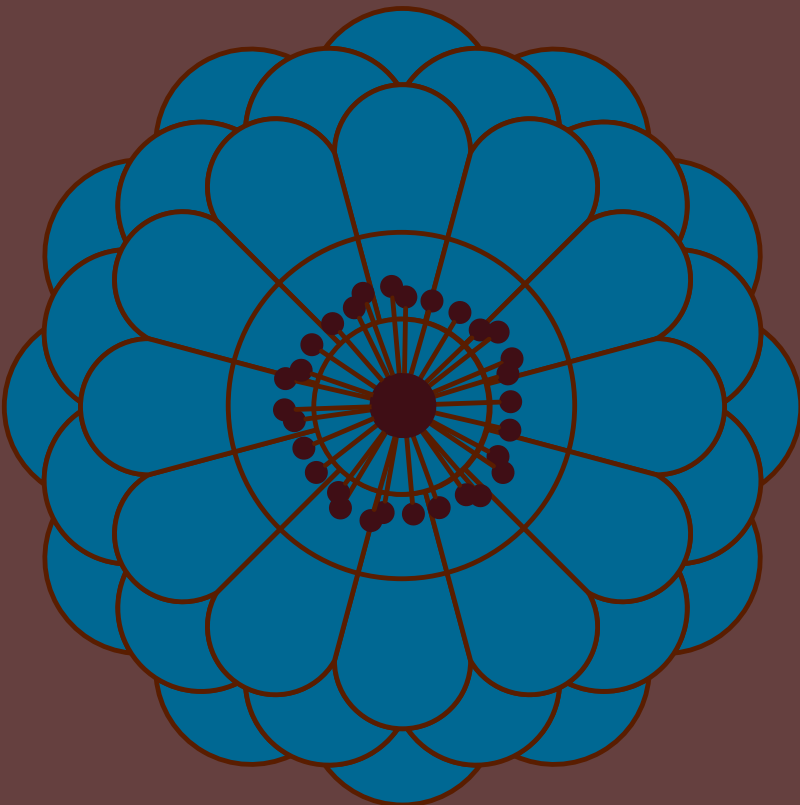
JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
No laws in Japan include or specifically prohibit violence and/or discrimination on grounds of SOGIE.	No laws in Malaysia include or specifically prohibit violence and/or discrimination on grounds of SOGIE.	No laws in Pakistan include or specifically prohibit violence and/or discrimination on grounds of SOGIE.	No federal law exists to specifically prohibit violence or discrimination against LGBT people. However, there are local ordinances that do so in the cities of Davao, Cebu, Angeles, Dagupan, Bacolod and Quezon City. Also, the Equal Protection Clause of the Bill of Rights should protect LGBT people from discrimination and constitutionally guarantee LGBT people the right to equal treatment before the law. http://www.chanrobles.com/article3.htm#.Ut-zH9Kwrbg	No laws in Sri Lanka include or specifically prohibit violence and/or discrimination on grounds of SOGIE.

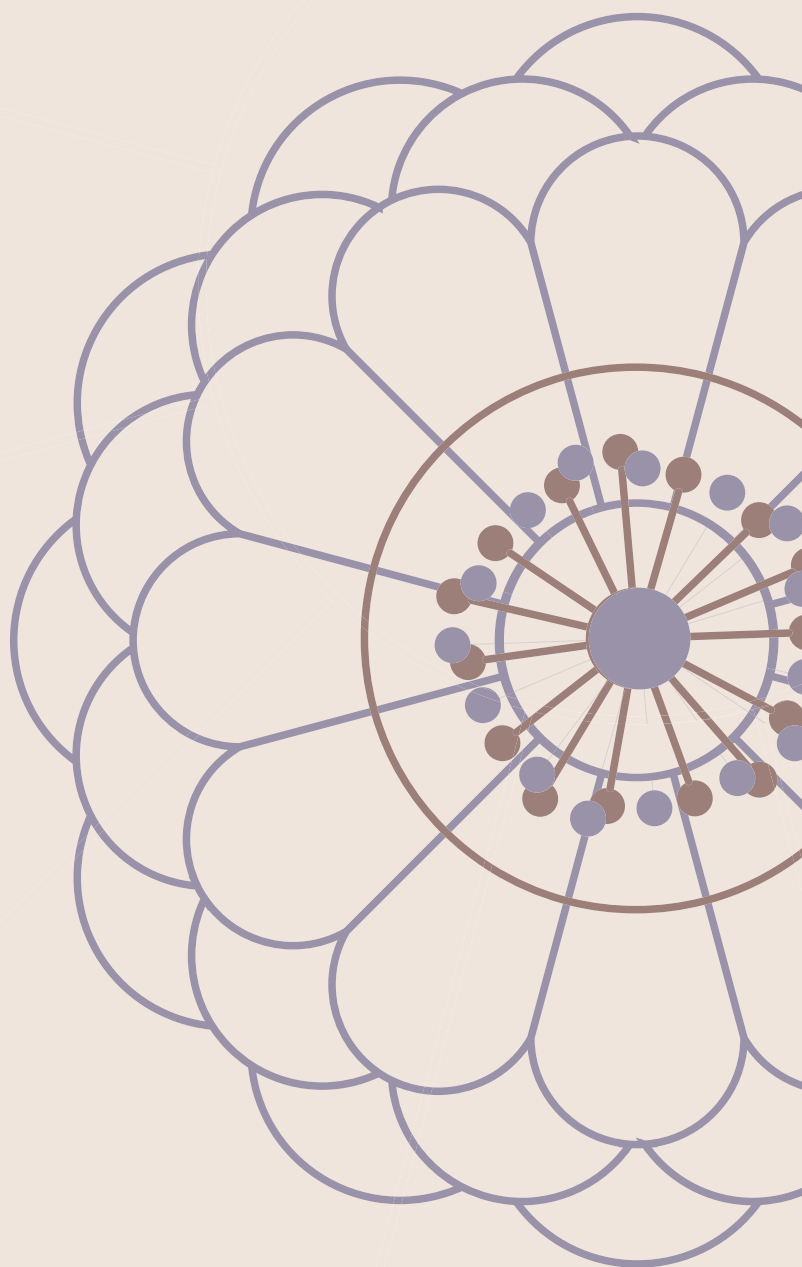
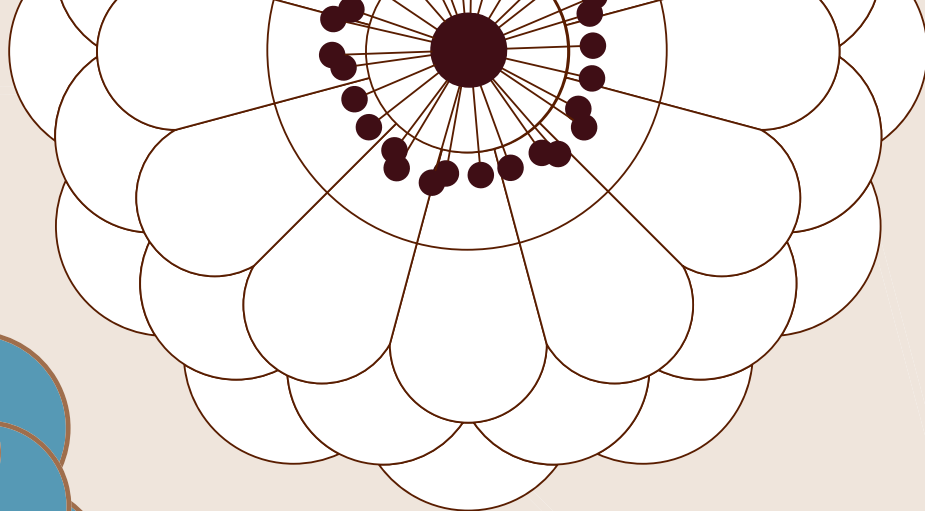
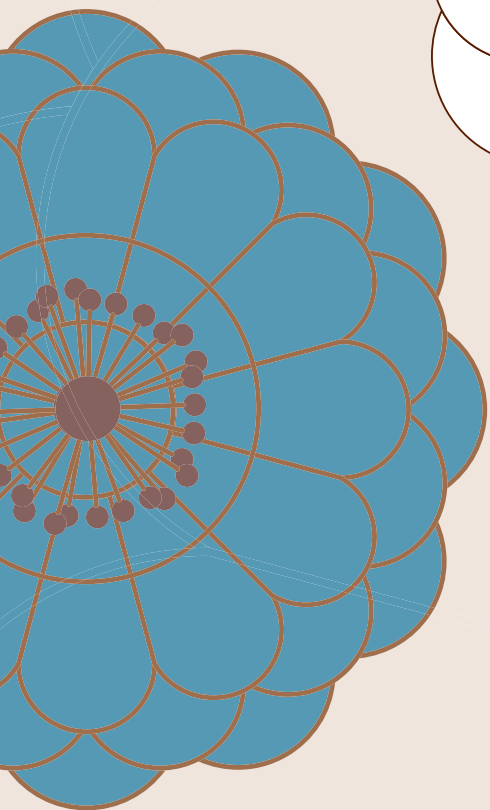
WHICH EXISTING LAWS ARE USED TO TARGET LBT PEOPLE FOR DISCRIMINATION, INTIMIDATION, HARASSMENT, AND/OR CRIMINALIZATION?

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
No laws in Japan are used to target LBT people for discrimination, intimidation, harassment, and/or criminalization.	Section 377A of the Penal Code criminalizes anal and oral sex, and applies to all people, but singles out same-sex sexual relations. Section 377D criminalizes “outrages on decency,” which is defined as “any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person.” Section 21 of the Minor Offenses Act criminalizes drunken and disorderly behavior in public places and is used to arrest and detain trans women. http://www.agc.gov.my/Akta/Vol.%207/Act%20336.pdf Dangerous Drugs Act is used to conduct raids on gay clubs and establishments. Sharia laws in each state are used to criminalize “male posing as woman” and “female posing as man,” liwat (sexual relations between men) and musahaqah (sexual relations between women).	Under the Hudood Ordinance of 1979, all sexual activity outside heterosexual marriage, regardless of consent, is considered fornication, and as such automatically criminalized. Section 377 of the Pakistan Penal Code, which criminalizes anal sex and bestiality applies to all people but it is rarely used against heterosexual people and instead is a threat to people in same-sex relationships. There have been no prosecutions under this law. Section 377 is also used to coerce and threaten transgender people who are street beggars and/or sex workers, both of whom are vulnerable to police abuse.	Article 46, Section 4 of the Family Code of the Revised Constitution of the Philippines of 1987 references homosexuality and lesbianism in the list of circumstances for fraudulent marriages. Article 55, Section 6 lists homosexuality and lesbianism as grounds for legal separation, and upon annulment of marriage, the homosexual spouse loses right of inheritance from other spouse and loses right to any conjugal property. http://filipinawives.com/FamilyCodePhilippines.htm Section 5 of RA 9048 prohibits transgender and transsexual individuals from changing their first name or sex on their birth certificates. http://www.tsphilippines.com/ RA 9208 or the Anti-Trafficking in Persons Law of 2003 is used to punish gay men clients of a sex worker. http://www.lawphil.net/statutes/repacts/ra2003/ra_9208_2003.html The expanded Anti-Trafficking Law of 2012 broadens police powers and is used by police to target premises frequented by LGBT people for arbitrary raids. http://www.gov.ph/2013/02/06/repub-lic-act-no-10364/	Gross Indecency Law under Section 365A of the Penal Code (Amendment) No. 22 of 2005. Vagrants Ordinance of 1842 penalizes public loitering which is open to interpretation by police and tends to target sex workers, transgender people and/or anyone with non-conforming gender expression. Those arrested under this law are vulnerable to sexual harassment, sexual abuse and mistreatment while in detention, particularly low-income transgender women and men, and low-income women whose gender expression is on the masculine spectrum. Section 399 of the Penal Code, which penalizes Cheating By Personation, targets women “disguised as men” and trans women for “misleading the public.” Personation is defined as pretending to be some other person, knowingly substituting one person for another, or misrepresentation.



JAPAN

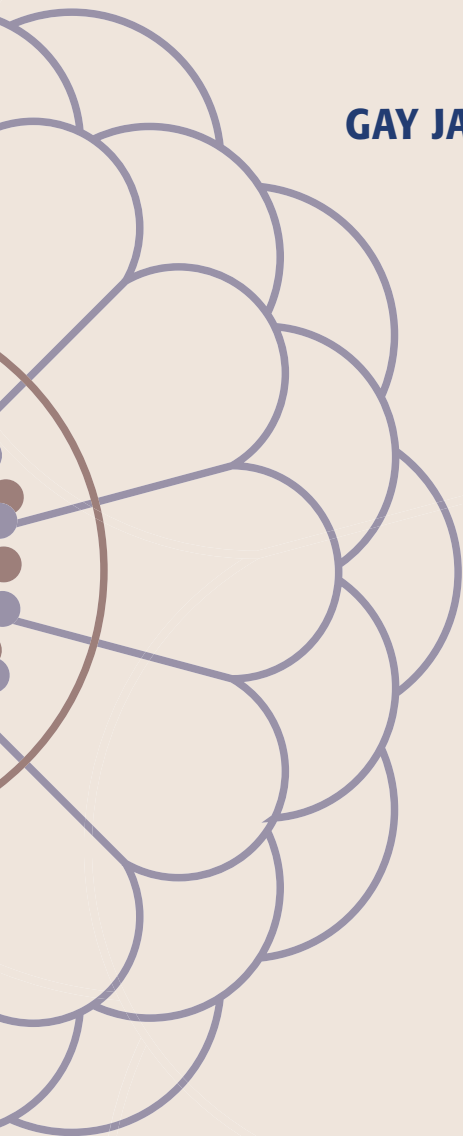




STRIVING FOR DIGNITY AND RESPECT

Experiences of Violence and Discrimination as
Told by LBT Persons in Japan

GAY JAPAN NEWS



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INTRODUCTION

This research project was undertaken by Gay Japan News, a non-commercial online news source and advocacy group with volunteer staff members, and the International Gay and Lesbian Human Rights Commission (IGLHRC), a human rights non-governmental organization (NGO) with United Nations consultative status. Gay Japan News received funding from the Global Fund for Women to replicate the methodology in Japanese and carry out documentation. Prior to the research, Gay Japan News had submitted information based on interviews with stakeholders to the United Nations about the human rights situation of lesbian, gay, bisexual and transgender (LGBT) people in Japan. We lacked information about direct LGBT experiences, especially experiences of violence against lesbian, bisexual and transgender (LBT) people because documentation on this issue did not exist. This was the main reason that we decided to take part in this research project.

From November 2010 to March 2012, Japan research team members interviewed 50 LBT people about their experiences of violence. In this research, “violence” referred to physical, emotional or sexual violence. Discrimination, which contributed to violence, was also included. During outreach, we had to refrain from using the term “violence” because it sounded too strong to respondents and even to some of the team members. In order not to scare people away, we explained the purpose of the research and listed violent acts to help people understand the focus of the research.

Summary of Findings

The most frequently experienced form of violence for our LBT respondents was emotional violence – 31 interviewees reported that they were “hurt,” “stunned,” “unbearably injured,” or “humiliated” by emotional violence, which included being subjected to degrading words about sexual orientation or gender identity, and being forced to keep their identities invisible.

Sexual violence was another prevalent form of violence experience by 28 out of the 50 LBT respondents.

Perpetrators of violence were mostly non-state actors. There were only three documented cases of state actor violence in this research. This is because most of our respondents were very careful about which state actors they “came out” to, or to whom they disclosed their sexual orientation or gender identity. Usually, coming out to state actors was based on medical urgency or needing to legally change gender.

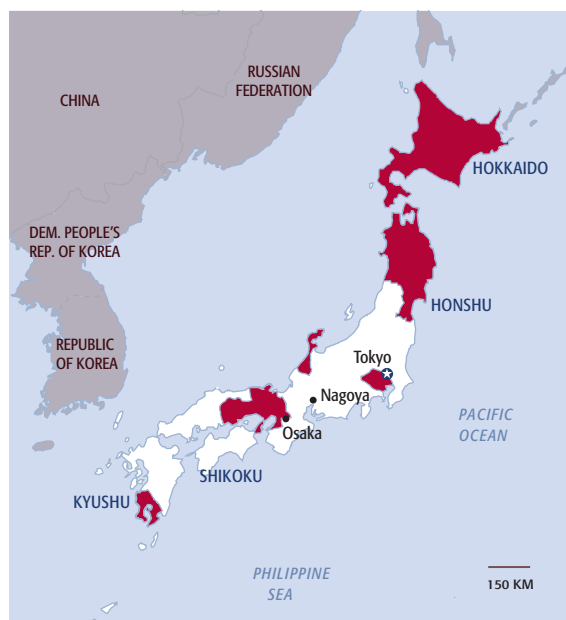
Almost all LBT respondents who experienced violence went to self-help groups for people who identified as *seku mai* (a Japanese term for sexual and gender minorities). None of our respondents who faced violence went to professionals like psychiatrists, psychologists or lawyers because they did not expect to receive LBT sensitive help.

INTERVIEWEE DEMOGRAPHICS

For this project, we interviewed 50 people¹ who were survivors of some form of violence motivated by their sexual orientation or gender identity. Twenty-one respondents identified as transgender with diverse sexual orientation, fourteen identified as lesbians, eight identified as bisexual women, two identified as pansexual woman, and five used other identifiers, including “gender queer,” “non-heteronormative woman,” or FtX. (Some transgender people who do not identify as women or men, identify as female-to-X. This identity is often used by women who do not conform to the heteronormative culture and because of that would rather not identify themselves as female in Japan.)

JAPAN

LOCATIONS OF LBT INDIVIDUALS INTERVIEWED



Interviews were conducted in six different regions, namely, Tohoku, Kanto, Chubu, Kansai, Chugoku, and Kyushu/Okinawa. The regions were selected on the basis of their geographic proximity to the

¹ One interview with a transgender respondent had to be stopped. The respondent had a flashback during the interview and could not continue. The respondent did not want to reschedule.

project’s researchers. The different regions did not show differences in respondents’ experiences of violence. The only noteworthy difference was that respondents in Kanto and Kansai regions, which are Japan’s largest regions, had greater access to self-help groups.

The average age of our sample was 36 with the youngest being 22 and the oldest 58. Experiences of violence were not different because of the age of respondents.

Thirty-five respondents had finished tertiary level education while twelve had finished secondary level. (No information was available for two respondents.) The respondents’ level of education did not correspond to forms of violence they experienced.

COUNTRY CONTEXT

The Family

One of the most important relationships in Japanese society is the parent-child relationship. A 2007 white paper on national “lifestyle,” titled “A comfortable way of life for the Japanese people, founded on personal relationships,”² stated that the majority of Japanese people believe that only lineal and marital relationships constitute family. People are also expected to respect their parents and obey them, a belief influenced by Confucianism. Although today more people stay unmarried – due to economic barriers to forming one’s own family, few chances of meeting the right partner, and the younger generation increasingly being indifferent to marriage³ – getting married and having children is still considered important to prevent a family

² “White Paper on the National Lifestyle 2007: A comfortable way of life for the Japanese people, founded on personal relationships,” Japan Cabinet Office, accessed February 21, 2013, http://www5.cao.go.jp/seikatsu/whitepaper/h19/06_eng/index.html.

³ “Annual Population and Social Security Survey (The National Fertility Survey),” Ministry of Health, Labor and Welfare (2010), accessed February 21, 2013, http://www.ipss.go.jp/ps-doukou/j/doukou14_s/doukou14_s.asp.

name from going extinct. Equally significant, harmony in family relationships remains a priority to Japanese people in the same way that harmony in society is seen as important. This “harmony” in Japanese culture means that one does not bring shame to other family members and one does not advocate for their individual rights. Advocating for one’s own rights and defying traditional roles and family expectations can be considered selfish.

Women’s Rights

The movement to stop violence against women in Japan started in the 1980s. The women’s and feminist movements have fundamentally changed the legal and social situation for women in Japan. In 1986, the Japanese government legislated the *Equal Employment Opportunity Law to ratify the Convention on the Elimination of All Forms of Discrimination Against Women* adopted in 1979 by the United Nations General Assembly.⁴ In 1995, a group of feminists who took part in the Fourth World Conference on Women in Beijing started advocating for an anti-domestic violence law in Japan. The law was enacted in 2001 to protect victims of spousal violence.⁵ The *Anti-Stalking Law* was enacted in 2002 – prompted by a 1999 case in which a woman was stalked and murdered by her ex-boyfriend.⁶ In 1991, Korean women who had been sexually enslaved by the Japanese army during the Second World War broke their silence and came out as “comfort women,” revealing what they had suffered. After much denial of responsibility, the Japanese government set up the Asian Women’s Fund in 1995 to compensate them, which was operational until 2007.⁷

These developments on domestic and international levels heightened social awareness in Japan about violence against women. In 2001, the Japanese government launched the national *Campaign to End Violence Against Women*, which was headed by the Gender Equality Bureau of the Prime Minister’s Cabinet Office and renewed every year.⁸

Despite these positive steps, women’s human rights in Japan are still taken lightly. The Japanese government has failed to provide effective protection and redress for women who are victims of violence and have failed to adequately prevent all women from becoming victims of violence. For instance, in the 2011 *Survey on Violence between Men and Women*, conducted by the Gender Equality Bureau, 7.7% of women who responded said they were forced to have intercourse at least once and only 3.7% of them said they reported the rape to police.⁹ According to the 1998 *Survey on Mental Health and Health of Children and Family* by Japan’s Sexology Information Center, 1 in 6.4 girls and 1 in 17.4 boys experience sexual abuse at least once until the age of 12.¹⁰ According to 2012 data from the National Police Agency of Japan, police received 19,920 reports of domestic violence and 55 reports of murders of battered women over that twelve-month period.¹¹ This report only captures reported domestic violence, which suggests

4 General Assembly Resolution 34/180 of December 18, 1979.

5 Law regarding Prevention from Spousal Violence and Protection of the Victims, Law No. 31, 2003, last amended on July 11, 2009 as Law No. 113, accessed November 8, 2012, <http://www.gender.go.jp/dv/dvhou.html>.

6 Anti-Stalking Law. Law No 81 of May 24, 2000.

7 “Regarding the Situation and Future of the Asia Women’s Fund,” Ministry of Foreign Affairs, accessed January 13, 2014, http://www.mofa.go.jp/mofaj/area/taisen/murayama_kk.html.

8 “Campaign to End Violence against Women,” Gender Equality Bureau, Cabinet Office, accessed on November 9, 2012, <http://www.gender.go.jp/honbu/130605a.html>. The campaign describes violence against women as “violence by husband or partner, sexual assault, buying and selling sex, sexual harassment, stalking and others severely violates women’s human rights and is an important issue to be overcome to realize gender equal society. Violence in principle can never be tolerated against anyone regardless of their sex, perpetrator or relationship between victim and perpetrator. Violence specifically against women must be promptly tackled considering the situation regarding violence and social structure men and women live in.”

9 Information of Assistance in Incidents of Spousal Violence, Gender Equality Bureau, Cabinet Office, accessed January 13, 2014, http://www.gender.go.jp/e-vaw/chousa/h24_boryoku_cyoua.html.

10 T. Yoshida, “Children and Sexual Abuse,” Shueisha Shinsho (2001).

11 “2012 White Paper on Crimes,” National Police Agency, accessed on January 13, 2013, <http://hakusyo1.moj.go.jp/jp/59/nfm/mokuji.html>.

an incomplete picture of actual prevalence, which is usually much higher.¹²

Many women and girls, including women who are sexual minorities, still suffer from gender-based violence. Yet, LBT people in Japan often do not consider themselves to be included under the anti-domestic violence legislation or in the *Campaign to End Violence Against Women*. For the most part, this is because they are not explicitly covered by the legislation, which is premised on the notion that perpetrators of domestic violence can only be men or husbands, and also because they feel excluded by Japanese society as a whole. This exclusion and the silence around violence against LBT people in Japan were the impetus for the research and documentation project we undertook between 2010 and 2012.

LGBT Rights

In the last ten years, more data has become available about the situation and experiences of gay and bisexual men.¹³ However, very little data exists on lesbians, bisexual women and transgender men.¹⁴ This lack of representation of lesbians, bisexual women and transgender men can be attributed to the silence surrounding issues of this population of Japanese society. On the other

hand, transgender women are visible in research and have become more socially recognized since the enactment of the *Gender Identity Disorder law* in 2003.¹⁵ This law enabled all transgender people (women and men) to indicate their chosen gender in the *koseki* (family register), but only after they had been diagnosed with Gender Identity Disorder and thus acquiesced to defining their identity as a pathology.¹⁶ *Koseki* is a legal document that works as a root document for other legal identity cards. It is the Japanese system of family registration by which births, deaths, marriages and divorces of Japanese nationals are recorded. It plays a central role in Japanese Family Law. The *koseki* contains the following information: a person's name, sex assigned at birth, dates of records and events such as adoption, marriage and death, names of the father and the mother, and the relationship to them, if adopted, names of the adoptive father and mother, if married, whether the person is a husband or a wife, if transferred from another *koseki*, the former *koseki*, and the person's registered permanent residence. The sex stated in the *koseki* is reflected in most of the important legal documents including pension books and applications for national health insurance and unemployment insurance. In some municipalities, the gender of each person does not appear on their national health insurance cards and driver's licenses as a result of advocacy by transgender people who showed that the gender column on identity cards constituted a barrier to them being able to access public services.

12 The statistics cited above are not disaggregated based on sexual orientation or gender identity.

13 Research on "Hard-to-reach populations and stigmatized topics" such as Internet-based mental health research has focused on Japanese men who are gay, bisexual, or questioning their sexual orientation. Research on suicide has also focused on Japanese homosexual, bisexual or men questioning their sexual orientation. Y. Hidaka and D. Operario, "Internet and Suicide" (Nova Science Publishers, Inc., 2009); T. Homma, Ono-M Kihara, S. Zamani, Y. Nishimura, E. Kobori, Y. Hidaka, S.M. Rabari, and M. Kihara, "Demographic and behavioral characteristics of male sexually transmitted disease patients in Japan: a nationwide case-control study," *Sexually Transmitted Diseases*, Vol. 35 (2008).

14 "Survey on Sexuality of 310 Non-Heterosexual Women" by Sexuality Survey Group (Nanatsumori Shokan, September 1995) is the only comprehensive documentation of experiences of lesbians, bisexual women and transgender women including their experiences of sexual harassment and sexual violence.

15 A variety of studies on transgender women's issues exist, including mental health, bullying in schools, and employment. These studies are conducted by members of the Japanese Society of Gender Identity Disorder, including Mikiya Nakatsuka, Katsuki Harima, Keichiro Ishimaru, and Yoshie Matsushima, accessed on January 31, 2014, http://ikiru.ncnp.go.jp/ikiru-hp/110913_1/22.pdf.

16 Law Concerning Special Cases Regarding Gender of People with Gender Identity Disorder, Law No. 111, adopted on July 16, 2003, accessed November 6, 2012, <http://law.e-gov.go.jp/htmldata/H15/H15HO111.html>;

Law on Partial Amendments to the Law Concerning Special Cases Regarding Gender of People with Gender Identity Disorder, Law No. 70, adopted on June 18, 2008, accessed on November 6, 2012, http://www.shugiin.go.jp/itdb_housei.nsf/html/housei/16920080618070.htm.

The visibility of gay men and transgender women is also evident in Japanese television programs although these programs often mock them.¹⁷ For the reason stated earlier, lesbians, bisexual women and transgender men tend to be far less visible in the daily television programs.

LBT people are subject to stereotypes, mockery and negative attitudes.

Overall, LGBT people are generally not portrayed by mass media or perceived by Japanese society-at-large as family members, friends, colleagues or neighbors. In Japanese society, anyone who is perceived as different from the majority is seen as abnormal or an outsider. This not only affects LGBT people¹⁸ but also people with disabilities, *burakumin*,¹⁹ ethnic minorities such as indigenous Ainu and Ryukyus, Koreans, Chinese and newcomers,²⁰ people born out of wedlock, single-parent families, leprosy patients, and people with HIV/AIDS. Lack of human rights education in schools contributes to these misconceptions. In the case of gender and sexual minorities, lack of sex or sexuality education in schools contributes to these misconceptions.

In place of factual, positive and affirming information, LBT people are subject to stereotypes, mockery

17 Gay men who appear in TV programs are often cross-dressing and laughed at by others. Transgender women who appear in TV programs are sometimes referred to and treated as men or called by the names they were given at birth.

18 Sam Shoushi, "Japan and Sexual Minorities" *FOCUS June 2008 Volume 52*, Asia-Pacific Human Rights Information Center, accessed on February 3, 2014, <http://www.hurights.or.jp/archives/focus/section2/2008/06/japan-and-sexual-minorities.html>.

19 The burakumin are descendants of outcast communities of the feudal era, which are mainly comprised of those with occupations considered "tainted" with death or ritual impurity (such as executioners, undertakers, workers in slaughterhouses, butchers or tanners), and traditionally lived in their own secluded hamlets and ghettos. "Burakumin," *Wikipedia*, accessed on February 3, 2014, <http://www.princeton.edu/~achaney/tmve/wiki100k/docs/Burakumin.html>.

20 New comers are migrants who came to Japan mainly during the second wave of migration of foreign nationals in and after the 1980s. Solidarity Network with Migrants Japan homepage, accessed on February 3, 2014, <http://www.migrants.jp/v1/English/English.html>.

and negative attitudes. The prejudice towards people of diverse sexualities and gender identities is so subtle and invisible that LBT people in Japan internalize it. Many LBT people do not even consider this to be a form of violence; they take for granted that they will be mocked and believe they simply must bear it. One consequence of living in and internalizing a prejudiced environment is that when LBT people experience violence or discrimination, they keep it inside.

They take for granted that they will be mocked and believe they simply must bear it.

They fear unwanted attention to their sexual orientation and gender identity, and they fear that they might be mocked just like the gay and transgender characters on television or rejected by families, friends and neighbors.

MANIFESTATIONS OF VIOLENCE

All of the LBT respondents interviewed for this project experienced some form of violence: emotional violence, sexual violence, and/or physical violence, and/or some form of discrimination that led to violence on the basis of their gender identity, sexual orientation or gender expression.

The most frequently experienced form of violence among those interviewed was emotional violence.

Perpetrators of violence were divided into two groups: state and non-state actors. Non-state actors include both institutions and private individuals. Respondents experienced violence both in the private and public spheres. State perpetrators included a municipal board of education, teachers and other school staff. Non-state perpetrators included medical professionals, private employers, and media. Private individuals who perpetrated violence included immediate family members, relatives, friends, partners or ex-partners, partner's family, classmates, colleagues, neighbors, landlords and passersby.

Emotional Violence by State Actors

In Japan, men and women are expected to dress, talk and behave according to a strict code of conduct that has to be consistent with their sex at birth. This code of conduct is enforced at home, workplaces, medical institutions, public facilities and schools. In public and private schools (both of which must comply with directives from the Ministry of Education), uniforms are different for female and male students, especially in junior high and high schools – skirt and blouse for girls, suits or black stand-up collar shirts for boys.

- From elementary school to high school, teachers told K,²¹ a transgender female-to-male respondent to, “behave like a woman.” K reported thinking, “I cannot be feminine, because I’m a man.” He silently bore his teachers telling him to act in accordance with his sex assigned at birth, because he did not expect them to understand his gender identity.
- Mami²², a transgender male-to-female school-teacher who looks womanly because of her long hair was told by school administrators to wear a tie or she would be “punished.” The Board of Education in Hokuriku region ordered her “to take a year off to participate in “some kind of training” and have sex reassignment surgery during the year off.” This instruction from the Board meant not being able to give her students notice that she was leaving for a year. Mami had been going to a gender clinic to get estrogen hormone injections and did not at the time want sex reassignment surgery, so she was “shocked” that the school required that she undergo surgery as a condition of employment.
- K, a transgender man respondent said, “My supervisor at university kept referring to me as she. I told him that what he was doing to me was violence because my dignity was hurt.”²³

21 K, Yamashita interview, Kansai region, Japan, November 13, 2011.

22 Mami, Masuhara interview, Chubu region, Japan, February 12, 2012.

23 K, Yamashita interview, Kansai region, Japan, November 13, 2011.

Emotional Violence by Non-State Actors

The most frequently experienced form of violence among those interviewed was emotional violence. In this study, emotional violence is interpreted as emotions that individuals feel as a consequence of violence. For instance, 31 respondents felt “hurt,” “stunned,” “unbearably injured,” or “humiliated” after degrading words were directed at them on the basis of their sexual orientation and gender identity, or when they encountered indirect commentary that rendered their identities invisible.

- One psychiatrist told an FtX²⁴ respondent that she “should not focus on your concerns about gender” but “the [more] important point is what she would do at work.”²⁵
- Staff at a medical clinic told Aya,²⁶ a transgender woman, “not to come here like that.” Aya usually wears women’s clothing, however, the clinical worker told her to “wear a pair of jersey²⁷ when you come here” so as “not to confuse” other patients at the clinic. In this instance, Aya’s gender non-conformity appeared to take greater precedence for the clinic than her health needs.

Physical Violence

A,²⁸ a transgender female-to-male college student, said, “[I]n my elementary school days, I had to carry a red satchel to school.” Elementary school students usually carry satchels in Japan. Red was a popular satchel color for girls and black for boys. A’s mother expected him to carry a red one. A “used to feel uncomfortable with the red satchel” since the color did not correspond to his gender

24 See Terminology.

25 Ajima, Uchida interview, Tohoku region, Japan, December 26, 2011.

26 Aya, Shimada interview, Kansai region, February 3, 2012.

27 Jersey refers to long-sleeved T-shirt and trousers made of jersey material. It is considered a unisex outfit and is usually worn by students.

28 A, Yamashita interview, Tokyo, Japan, January 29, 2011.

identity. His mother beat and slapped him and deprived him food when A did not wear the girl's school uniform she made for him.

Indirect Discrimination or Violence

Perpetrators may not have always intended to hurt the respondents but often did nonetheless. Remarks that perpetrators made to respondents seemed to reflect their general contempt towards Japanese people with a non-conforming sexual orientation, gender identity or gender expression.

- Ajima,²⁹ who identifies as FtX “feels stared at” on trains and on the street. Ajima explained, “No one is quite hostile to me, but I know they [people on the street] are wondering what I am.” She experienced hostile gazes so often that she had to “normalize” the constant staring (meaning, accept the staring as understandable and pretend to accept it) in order to cope. Ajima also recalled that when coming out, “A friend of mine said ‘You must be kidding me!’ and didn’t take me seriously. It emotionally stunned me.”
- Nana,³⁰ a lesbian, recalled being suspended from piano lessons when she was young for unconsciously having expressed her attraction to another girl. The girl’s parents noticed and reported to her piano teacher. After her suspension was lifted, she was told to “be normal next time.”
- Ken, a closeted transgender man who has lived as a wife, mother, daughter-in-law and woman for most of his life said, “My neighbor sees me ... and questions, ‘Why doesn’t she wear a skirt?’ or ‘Why doesn’t she wear make-up?’ They wonder why I don’t set my hair [like other women.]” Ken represses his gender identity around his family, friends and neighbors and has to function as a woman. Only the LBT people he meets at a local sexual minorities group know his real gender

29 Ajima, Uchida interview, Tohoku region, Japan, December 26, 2011.

30 Nana, Yamashita interview, Tohoku region, Japan, July 1, 2011.

identity. Ken also recalled a moment when he tried to tell his friend about his gender identity by saying that he supported sexual minorities. “My friend said ‘These people are monsters.’ I know she didn’t mean it at me, but I was very hurt by that.”³¹

Direct Discrimination or Violence

Derogatory terms and critical phrases directed at LBT people because of their gender identity, sexual orientation and/or gender expression was a commonly reported form of emotional violence.



- Classmates of Kanaya,³² a bisexual woman in her early 20s, wrote, “That bitch is a les³³” on a window of the bus she took daily to school.
- When Suzuki,³⁴ a non-heteronormative woman, age 25, was caught by her mother in a moment of intimacy with a friend, her mother asked “Are you *les*?”

31 Ken, Masaki interview, Tohoku region, Japan, February 7, 2012.

32 Kanaya, Yamashita interview, Tohoku region, Japan, July 2, 2011.

33 See Terminology.

34 Suzuki, Ragi interview, Kanto region, Japan, March 7, 2012.

- The mother of the partner of Takeru,³⁵ a heterosexual transgender man, 50, kept telling him, “You’re disgusting” when she found out that Takeru and her daughter were in a serious relationship. The mother said to him, “You betrayed me. What have you done to my daughter?”
- Aya,³⁶ a transgender woman, said that when she was little, “Even my brothers would call me *okama*.” As an adult, Aya ran for election as a City Assembly member, and she disclosed her gender identity. Throughout her campaign whenever she gave speeches, passersby flung the same derogatory word at Aya that her brothers had used.
- Kazuko³⁷ was accused of having a relationship with her same-sex colleague. Her cousin said to her, “Are you out of your mind? I am going to tell your mother and her parents what’s going on. You destroyed the whole family.”
- For six months, the parents of Airi,³⁸ a lesbian, kept pressuring her to enter a psychiatric institution. They went to the apartment where Airi lived with her partner and shouted, “Open the door!” They blamed her partner, So³⁹, for their relationship. Airi remembers her parents, “getting excited and starting to hit the table.”
- A, an FtM respondent, said he felt “hurt” when his female classmate approached him and asked whether he had a sanitary pad.⁴⁰ The classmate was aware of A’s gender identity and meant this to hurt him.

Invisibility as Violence

Six respondents said they did not experience violence because their sexual orientation or gender identity was not visible. Since they were exposed to negative attitudes and statements daily, this made them careful not to disclose their sexual orientation and gender identity so that they, or even their families, would not face discrimination or violence. However, for some, being in the closet was also a form of violence.

- Ueki,⁴¹ a 22-year-old lesbian, said, “I’ve always had that feeling of being oppressed, not being able to tell who I really am, lying about myself to friends, and disappointing my mother if [I] came out...I haven’t come out for 22 years. I’ve taken it for granted now [to feel this way.]”
- Kimura, a bisexual woman, said that she had never experienced violence “in a clear way,” but she actually experienced psychological violence. Kimura felt “hurt every time someone said something hostile or prejudiced” about people of sexual minorities.
- Yuki, a bisexual woman who encountered denial by her family when she came out, stopped trying to talk about her sexual orientation to other people. She said, “[Clear forms of] violence is not an issue for me. For me, [the issue is] that I do not feel myself anymore [by the denial and other unintended yet abusive words by others.]”
- Mami, a transgender male-to-female school teacher who worked as a male teacher, said, “I wouldn’t mind being out [about my gender identity] and facing violence, but I do mind having my family members affected by me being out.”

35 Takeru, Masaki interview, Kanto region, Japan, February 17, 2012.

36 Aya, Yamashita interview, Kansai region, Japan, January 3, 2011.

37 Kazuko, Masaki interview, Tohoku region, Japan, February 25, 2012.

38 Airi, Masaki interview, Tohoku region, Japan, February 5, 2012.

39 So, Masaki interview, Tohoku region, Japan, February 24, 2012.

40 Hideto, Masaki interview, Tohoku region, Japan, December 28, 2011.

41 Ueki, Masuhara interview, Chubu region, February 11, 2012.

felt the sexual violence was because of their gender as women, which they felt made them vulnerable to sexual violence (like cisgender women). However, transgender men who experienced sexual violence felt their changed gender was disregarded and they were targeted for sexual violence as women.

- Male colleagues at an after-work get-together touched Yoshihara, a transgender woman. She said, “I’m touched frequently. If a man touches a woman [who is biologically female,] it will be a problem. But if he touches me, that does not seem to become a problem.” In Japanese culture, people don’t touch, kiss or hug people they are not familiar with or close to. Being touched by a co-worker with whom there is no close relationship creates much discomfort and is experienced as disrespect.
- Meg, a transgender woman, felt the same. She said, “[My male colleague] started shaking hands with me and ended up touching my buttocks... It would be sexual harassment if he had been touching an ordinary woman, right? But is it also sexual harassment if he’s touching me?”
- Ozawa,⁴⁸ a woman in her fifties who identified her sexual orientation as “questioning,”⁴⁹ was molested on a train and encountered exhibitionists on the streets multiple times in her life. She said: “I’ve only been living as a very ordinary girl and woman. [People] won’t be able to tell [that I’m lesbian] by my appearance. In that sense, I share difficulties that women generally face. No special difficulty [because of my sexual orientation].”
- Nami,⁵⁰ a lesbian, remembered being sexually abused by her father intermittently when she was in the fifth or sixth grade. The reason she gave was “because of being born as a girl.”

- Neko,⁵¹ a bisexual woman recalled her cousin touching her breasts in her early twenties. She said, “People hold you up in the sky when you are little, right? He held me in the sky like that and touched my breasts. I wasn’t sure if it was intentional or unintentional, but I couldn’t tell anyone. So, I felt it was wrong.”

Sexual Violence by Family Members

Our findings showed that members of the family sometimes perpetrated sexual violence. In two earlier examples of sexual violence by family members, respondents attributed the assaults to their being women or girl children. But others spoke of the violence being directly related to their sexual orientation or gender identity. A transgender woman spoke of her experience.

- Mao,⁵² a transgender woman, said, “[My uncle] touched [my breasts]... after I had breast implants. He did it repeatedly.”
- Ken,⁵³ a transgender man, said, his father-in-law attempted to rape him twice “for being perceived as a woman.”

Intimate Partner Violence

Twelve of the 28 respondents experienced sexual violence by their partner, ex-partner or a date.

- Shoko⁵⁴ experienced being stalked by her ex same-sex partner. The ex hid and waited for her to come home and raped her. After the incident, she fled to Tokyo for safety without informing the ex.

48 Ozawa, Yamashita interview, Tohoku region, January 14, 2012.

49 See Terminology.

50 Nami, Ragi interview, Kansai region, Japan, February 29, 2012.

51 Neko, L’Heruex interview, Kansai region, December 26, 2011.

52 Mao, Uchida interview, Tohoku region, Japan, January 24, 2012

53 Ken, Ken, Masaki interview, Tohoku region, Japan, February 7, 2012.

54 Shoko, Masaki interview, Tokyo, Japan, February 18, 2012.

NANA

Nana, 33 years old, is a lesbian residing in a town in Tohoku with her parents, younger brother, and a cat. She was working as a bar hostess when we spoke to her. Her highest level of education is junior college. She has experienced sexual, psychological and economic violence because of her sexual orientation.

Her piano teacher in elementary suspended her because Nana unconsciously expressed her attraction to another girl at the piano school. The girl's parents had noticed it and reported to the piano teacher. After her suspension was lifted, Nana was told to "be normal next time." She remembers being "very hurt as a child."

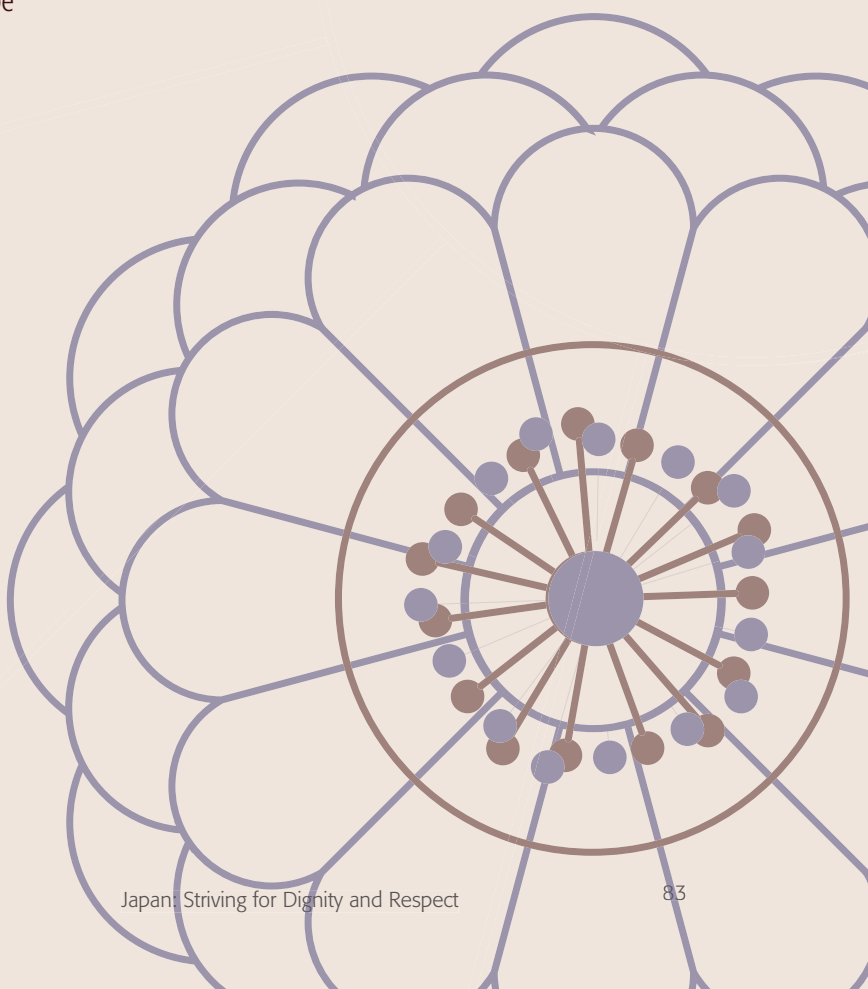
When she was 21, Nana's aunt "found out" Nana's sexual orientation from her gender expression. The aunt pressured her to go to a psychiatrist to be "cured."

In junior college, she dated a man to "cure" her sexual orientation. The man raped Nana, resulting in physical injuries. He also stalked Nana. She did not tell anyone about what happened because she thought, "it was my fault." She did consider calling the police when she was being stalked but was afraid. "Police would ask questions and my lesbianism would eventually be revealed. I thought they might blame me for letting the man rape or stalk me," she said.

Nana came out voluntarily to a music teacher when she was 23. The teacher had a positive response, saying "[Being attracted to someone of same-sex] is natural and there are a lot of people like you in the US."

After graduating from junior college, Nana worked as a caregiver at a center for people with disabilities. When her colleagues asked what kind of man she considered her type, Nana responded, "I'm attracted to women." Her colleagues started ignoring her. She reported them to her employer. He told her that the center could not allow her to look after women clients because "we aren't sure if you might do something wrong to other women." For three years, Nana faced daily discrimination and isolation at her job. She suffered depression. The conditions affected her ability to continue working and she quit. She suffered economically as a consequence.

In 2007, Nana established an LGBT organization in her town to help herself and to help other LGBT people who also faced violence, discrimination and isolation.



- Shiho,⁵⁵ a woman who identified her sexual orientation as “towards other women,” was sexually assaulted on a date with a man. She said, “Even though he was my date, sex wasn’t consensual. He kissed me in a car but didn’t stop there. My body froze. I couldn’t move.” Shiho said that she went on this date with a man because she wanted to “cure” her sexual orientation.
- Nana, a lesbian respondent, tried to “cure” her sexual orientation by going on a date with a man when she was in college. However, she said that she realized, “I couldn’t sleep with a man [and my sexual orientation wouldn’t be ‘cured’].” Nana told the man she did not want to have sex with him, but he did not listen, and he raped her.
- Masato, a female-to-male transgender man, had thought that his gender identity would be “changed” if he went on a date with a man. In his attempt, a man raped him.
- Ohtsuki,⁵⁶ a woman who identified as pansexual, was forced to have sex with her boyfriend. She said, “He not only forced me to have sex, but was uncooperative about contraception. There weren’t physical injuries on my body, but I felt sick the next day after he forced me.”

Sexual violence by intimate partners was, in four cases, accompanied by severe physical violence, including kicking, punching, being dragged around, and having things thrown by the perpetrator. The combination of sexual and physical violence resulted in intense suffering.

- Aya,⁵⁷ a transgender woman and lesbian, was once a “husband” to a woman in legal marriage. She said: “[I experienced] so-called forced sex. I was exposed to verbal abuse on a daily basis. The worst thing was when she put a knife on my chest.

That’s how far it went. She also beat me and kicked me, but being forced to have sex was the most difficult. It lasted for 25 years. I did not doubt I was [being] forced although at that time, because I had this belief that [because I was born] a man, [I] should be able to perform sexually as a man, I thought it was wrong of me not being able to do so. I expected myself to perform a man’s role in sex. That was a job and role I believed I had to fulfill as a man.”

- Tanaka,⁵⁸ a transgender female-to-male “gender queer” whose sexual orientation is pansexual, said he experienced forced sex and unwanted sexual touching by his male partner.
- K,⁵⁹ a transgender woman who was in a same-sex relationship, said her partner had “thrown things” at her while she was forced into having a threesome with the ex-partner of her partner. Her partner would “vent her anger on objects kicked around in a room,” which scared K.

WORKPLACE DISCRIMINATION AND VIOLENCE

The workplace was another sphere where transgender respondents experienced emotional violence and discrimination. In Japan, job applicants are generally required to attach a photograph and circle a gender column in their curriculum vitae. When the legislation regarding gender change in the *koseki* (the family registry) was passed, it made it possible for some transgender applicants to change their sex as it appeared on legal documents. The legislation to legalize changed gender did not protect transgender employees from violence or discrimination after they were hired.⁶⁰

55 Shiho, Shimada interview, Kyusyu/Okinawa region, Japan, February 6, 2012.

56 Ohtsuki, Yamashita interview, Tokyo, Japan, February 17, 2012.

57 Aya, Shimada interview, Kansai region, February 3, 2012.

58 Tanaka, L’Heruex interview, Kansai region, January 29, 2012.

59 K, Yamashita interview, Kansai region, November 13, 2011.

60 Law concerning Special Cases regarding Gender of People with Gender Identity Disorder, Law No. 111, adopted on July 16, 2003, accessed on November 6, 2012, <http://law.e-gov.go.jp/>

TANAKA

Tanaka is 45 years old and resides in Osaka city, Osaka prefecture, with three roommates in a large shared housing complex. His highest level of education is a university degree. He is currently a freelance writer and receives welfare assistance from the government.

Tanaka feels that people who do not know him perceive him as a straight man. Most people in the gay community in which he is active perceive him as gay. Before he began his hormone treatments, he was perceived as a woman. But Tanaka identifies as a pansexual “gender queer” transman.

Being pansexual and polyamorous, Tanaka has had relationships with people of various gender identities. His first romantic relationship was when he was 17 years old with a heterosexual woman. The relationship lasted three years. Since then, Tanaka has not attempted a relationship with a heterosexual person and has focused on queer people.

Coming out was complicated due to his complex gender identity. His parents have been relatively supportive although recently his mother was upset when she found out that Tanaka was taking hormones. Tanaka left home when he was 25.

Tanaka lived with a partner who turned out to be a domestic violence offender. The partner physically and emotionally attacked Tanaka. He suffered brain injuries resulting in a current disability, which Tanaka refers to as “a disturbance of higher cerebral function.” He said that hospitals and clinics denied him treatment because he is transgender.

After many incidents of abuse from his partner, Tanaka ended the relationship and told the partner to leave the home. The partner left but Tanaka continued to receive threats. Tanaka has told people, including women’s rights scholars and activists, about the domestic violence he experienced, but he says that they are not supportive of him as a survivor of violence. He feels this is because he is not a woman in a heterosexual relationship.

He wrote a book in 2006 called “Transgender Feminism” but excluded his experiences of violence because he was being stalked by his former partner. Tanaka felt that more people supported his sexual and gender identities than his identity as a domestic violence survivor.

- Mamoru,⁶¹ a transgender immigrant man from Burma, who had lived in Japan for ten years, worked for a travel agency and was called “*homo*”⁶² by his boss after he submitted a medical certificate that indicated his Gender Identity Disorder. He showed the certificate to his boss to tell him that he was medically permitted to get male hormone injections. The boss looked surprised to see the certificate and

asked him how he had sex with his girlfriend. He made fun of Mamoru’s gender identity and verbally and sexually harassed him, which constituted discrimination and sexual harassment against him in the workplace. Mamoru was “hurt by what the boss said ‘as a joke.’”

- Masaki,⁶³ a transgender man, was denied a job interview at a convenience store after he answered the store manager’s question about why his curriculum vitae left out information about his education. Masaki told the manager that he was from a “women’s-only” high school, which revealed his transgender identity.

htmldata/H15/H15HO111.html; Law on Partial Amendments to the Law concerning Special Cases regarding Gender of People with Gender Identity Disorder, Law No. 70, adopted on June 18, 2008, accessed on November 6, 2012, http://www.shugiin.go.jp/itdb_housei.nsf/html/housei/16920080618070.htm.

61 Mamoru, T interview, Tokyo, Japan, February 21, 2012.

62 See Terminology.

63 Masaki, Ambo interview, Tohoku region, Japan, December 8, 2011.

- Anne,⁶⁴ a bisexual woman who worked for a non-governmental organization, heard a fellow human rights activist call a gay novelist “disgusting” while they were having lunch at the office. That word, she said, “took an option away from me to come out and even to tell him about the LGBT human rights work” in which she was involved.

LBT respondents experienced workplace discrimination that led to other types of violence – mainly verbal violence. Transgender respondents’ gender expression made them more visible than lesbians and bisexual women, who tended not to disclose their sexual orientation especially in the workplace. Lesbians and bisexual respondents indicated that unless they revealed their sexual orientation, people they worked with assumed they were heterosexual. One lesbian respondent who revealed her sexual orientation to her supervisor and colleagues, however, did experience verbal discrimination, including her supervisor over three years repeatedly telling her that she was not suitable as a caregiver for women with disabilities because she “might abuse other women.”

Sexual violence in the workplace was also reported in this research. The most common types of workplace sexual violence experienced were unwanted touching and coerced sex and sexualized and verbally abusive language. This is similar to the experiences of heterosexual women in Japan.⁶⁵

There were five cases where respondents experienced emotional violence or discrimination in *shukatsu*, which is a unique job hunting mechanism for fresh graduates in Japan.⁶⁶ Hiro,⁶⁷ a

respondent who identified as “gender neutral,” said, “I didn’t tie my hair or wear makeup [for job interviews]. There was no company after all that hired me. Gender is reinforced in *shukatsu*. So, I came to think that I had to find a workplace where [gender conformity is not required so that] I can last.”

Shukatsu is a term shortened from *shusyoku katsudo*, which means job hunting. Third year undergraduate students and first year Masters degree students usually submit their curriculum vitae online, take a written test, and visit companies that they want to work for to set up interviews. In *shukatsu*, most of the female students wear black women’s suits (with skirts) and male students wear black men’s suits (with pants). Many universities offer make-up courses for students in *shukatsu*. This semi-formal gendered dress code constitutes a serious barrier for non gender-conforming and non-heteronormative students whose gender expression is different from the rest of society. A possible reason we only had a couple of interviewees mentioning the *shukatsu* was because our respondents were older, and therefore were not students when the mechanism of *shukatsu* was introduced.

- Taka,⁶⁸ a transgender man, was denied a job on four separate occasions after he disclosed his transgender identity during the job interviews. One of the people interviewing Taka said to him, “We won’t hire you because such people [with Gender Identity Disorder] are troublesome.”

Our transgender female-to-male and transgender male-to-female respondents often experienced emotional violence because of the gap between the sex they were assigned at birth and their gender identity. It is difficult for anyone to have to express a gender which does not match their inner and deeply felt sense of being female, male or something other.

64 Anne, Ambo interview, Tohoku region, Japan, January 11, 2012.

65 1289 rape cases and 7027 cases of indecency through compulsion (where majority of the victims were women while there were male victims) were reported in 2010, accessed on November 9, 2012, http://shiawasenamida.org/m05_02_02.

66 “Reality of LGBT Shukatsu – Positive Foreign-Affiliated Companies towards Hiring, Negative Japanese Companies”, Aera, September 28, 2012, accessed on November 8, 2012, <http://dot.asahi.com/aera/2012092800036.html>.

67 Ragi interview, Kansai region, Japan, February 8, 2012.

68 Taka, Masaki interview, Tohoku region, Japan, January 30, 2012.

IMPACT OF VIOLENCE AND COPING METHODS

Our research findings showed that LBT people who experienced violence that was linked to their sexual orientation, gender identity, or gender expression suffered severe mental health consequences. Some attempted suicide or had suicidal thoughts; some practiced self-injury; most felt depressed or had flashbacks; several felt sick or had other physical symptoms such as hyperpnea, vaginal pain, addiction, and not being able to sleep. Some turned to alcohol or drug use as a way of coping, and others developed addictions. Several also experienced self blame, loss of confidence, and low self-esteem.

- Nana,⁶⁹ who was raped and lost a job because of her sexual orientation, went to the cliff to die and spent a whole night watching over the sea. She stopped herself from committing suicide. She said “I couldn’t see any hope in keeping on living. I had no one and no job while I felt sick [from being raped.]”
- Nami,⁷⁰ a lesbian who was sexually abused by her father and her classmates for being a woman, “periodically thought of committing suicide.” Her accumulated experiences angered her to the extent that she overdosed, became unconscious and was brought to a hospital.
- Ozawa,⁷¹ a lesbian who was raped by a man who she “dated” said, “I was sick for a week after the intercourse. I told myself it [sex with a man] was supposed to be good. I had flashbacks and felt very upset. The whole world looked loud and different. I felt so consumed for a week. I kept telling myself it was natural for a woman to experience those.”
- Nomiya,⁷² a transgender lesbian who was kissed by a man without her consent, said

she “blamed myself for not seeing it coming and for letting it happen to myself.”

Some LBT respondents changed their gender expression to conform to the type of femininity and masculinity that the society expected in order to avoid discrimination and violence, which in many cases exacerbated a sense of self-loathing, acute discomfort, and even physical pain. Some respondents lost friends and social contacts, experienced isolation, dropped out of school, were unable to complete their education, suffered job loss and loss of employment opportunities, or were evicted or had difficulty finding housing.

More than half of the 50 LBT people we interviewed considered committing suicide – five of them actually attempted to kill themselves.

- One transgender female-to-male respondent did not finish high school as a consequence of violence he experienced from his junior high school classmates because of his gender identity and gender expression.
- Tanaka, who experienced a combination of physical, sexual, verbal and emotional violence by his transgender female-to-male partner, suffered neurological injuries including memory loss and flashbacks.
- Hiroki,⁷³ a transgender man, said, “[My colleague] kept telling me to wear women’s uniforms [at work.] When I wore them, I got headache, nausea and rapid heartbeat. I could barely function. In the night, I couldn’t sleep. Because of this, I had no option but to quit.”
- Aya,⁷⁴ a transgender woman, had medical problems for five years when she worked as a company worker. She said, “I would often get duodenal ulcers, arrhythmia and alopecia areata” as a result of too much stress that she had from pretending to be a man at work.

69 Nana, Yamashita interview, Tohoku region, Japan, July 1, 2011.

70 Nami, Nami, Ragi interview, Kansai region, Japan, February 29, 2012.

71 Ozawa, Yamashita interview, Tohoku region, Japan, January 14, 2012.

72 Nomiya, Yamashita interview, Tokyo, Japan, February 11, 2011.

73 Hiroki, Uchida interview, Tohoku region, Japan, January 31, 2012.

74 Aya, Yamashita interview, Kansai region, Japan, January 30, 2011.

Twenty-seven respondents thought about suicide at least once in their lifetime while five of them actually attempted it. In fact, we lost one of our interviewees after all the interviews were completed.⁷⁵

It has been pointed out by Dr. Mikiya Nakatsuka, gynecologist at the gender clinic in Okayama University, that the mental health of people whose gender identity and gender expression are different from the sex they were born with is worse than those whose gender identity corresponds to the sex assigned at birth.⁷⁶ In our sample population, 27 people considered suicide. It was characteristic that most of the respondents who attempted suicide said they did not think they would “actually do it” but the idea of suicide came to them as a result of the violence experienced and because they felt “hopeless about their future.”⁷⁷

- Kazuko⁷⁸ said that she considered suicide because she “couldn’t see hope to live” after a relative accused her of having a lesbian relationship with her colleague.
- A,⁷⁹ a transgender man, said, “I was in the fifth grade in an elementary school and didn’t really understand what life and death actually meant when I thought of killing myself.” He wondered, “Could [I] be dead by jumping off from a building?”

75 See Profiles.

76 “Gender Identity Disorder: Attempted Suicide and Self Injuries Deteriorating due to Worsening Economic Situation”, *Mainichi Shimbun*, October 12, 2012, accessed on November 8, 2012, <http://mainichi.jp/feature/news/20121012ddm012040056000c.html>. According to the 1999 survey by Okayama University, 50 percent of patients who came to their clinic suspecting Gender Identity Disorder had attempted suicide or practiced self injuries. Suicide attempts among those who were diagnosed with Gender Identity Disorder decreased to 31 percent in 2007, four years after legislation was passed on gender change in koseki. Suicide attempts rose again in 2009 because of the economic recession and was approximately 60 percent in 2010.

77 A, Yamashita interview, Tokyo, Japan, January 29, 2011.

78 Kazuko, Masaki interview, Tohoku region, Japan, February 25, 2012.

79 A, Yamashita interview, Tokyo, Japan, January 29, 2011.

- Kimura,⁸⁰ a bisexual woman who felt hurt each time she experienced discrimination in her daily life, was “often attacked by the impulse of wanting to take her own life.” She attributed this feeling with “being a woman and a daughter in today’s Japanese society.” Kimura said that the exclusion of people of different gender identities and sexual orientations, even if unintentional, made her feel that she “didn’t exist.”

Some of our respondents were denied access to employment or compelled to leave their jobs because of their gender identity or sexual orientation.

Some are confined to working at the few places where their gender expression is accepted. Masato,⁸¹ a transgender man, was treated as a male worker at his workplace for two years after he came out. His boss told him that his coming out would be accepted at his branch but not at other branches of his company. He was told to “behave as a woman” if he wanted to attend meetings and training seminars jointly held by other branches or companies, which deprived him of opportunities to communicate with his colleagues outside his branch.

When transgender people do not apply to have their gender marker changed on official documents – in some cases for not wanting to be defined as having a disorder – they are vulnerable to discrimination and exclusion. Hiroto, a transgender man said, “I tried to apply for high school at the age of 21. The school said to me that they could not accept me after seeing my gender listed as woman on the health insurance card because they didn’t have any precedent of having a transgender student and didn’t want any trouble to happen to me.”⁸²

80 Kimura, Masuhara interview, Chubu region, Japan, February 11, 2012.

81 Masato, Masaki interview, Tohoku region, Japan, January 29, 2012.

82 Hiroto, Masaki interview, Tokyo, Japan, January 5, 2012.

Taka was 38 years old and residing in Akita city, Akita prefecture, when we spoke to him. He committed suicide six months after we conducted our last interview with him. His highest level of education was a high school diploma and he was unemployed and receiving welfare assistance from the government at the time of his death.

When asked about his gender, Taka expressed that he was a straight man while he felt that those who had known him by his “past gender” would have identified him as a woman. At the time of his interview, he had been admitted to a hospital where he was being treated as a woman in a ward for females.

Recalling his childhood, he remembered not being able to confide in others about his identity, and struggling to understand “what [he] was.” He first started to realize that what he had been experiencing was Gender Identity Disorder around 27 years old, and he felt he didn’t have enough courage then to freely express his gender through clothing, hairstyle, etc.

When he was twenty years old, Taka’s boss who did not know that Taka identified as a man, “playfully” attempted to touch Taka’s breasts. Taka considered this as sexual violence and felt that his dignity was violated on several levels – his boss felt entitled to commit sexual violence because he thought Taka was a woman, and Taka’s gender identity was invisibilized.

When he could not find employment opportunities because of his gender identity, he felt that he was finally able to explore his identity more and gain a better understanding of Gender Identity Disorder and his growing desire to meet others like him.

Taka experienced difficulty explaining his gender to strangers, including in institutions like hospitals, and also to the people closest to him. He felt that the label “Gender Identity Disorder” conveyed something “bent out of its shape and peculiar” and that women diagnosed with Gender Identity Disorder were perceived as “something unpleasant to be around” and “people who aren’t into men.”

When he was 37 and looking for employment, Taka came out at four job interviews and was blatantly told each time that he was being denied a job due to his Gender Identity Disorder. Several times, he insisted to no avail that “although [he is] a female, [he could] work as hard as a male.”

Taka gradually lost confidence in himself after the many job rejections. He gave in and circled “female” under the gender column of his curriculum vitae. Claiming to be female became more and more difficult as he was getting hormone injections to look and sound more like male.

When Taka told his job interviewer that he had Gender Identity Disorder, he was dismissed. People rejected the idea that he was a man. An uncle adamantly told Taka to “dress more like a woman,” that Taka was a woman, and that he would be “cured” if he got [female] hormone injections.

The challenges he faced created great psychological distress, and at times made him wonder “why he had to be born that way.” He grew depressed and felt that his transgender identity was at the root of his depression. He never reached out to mental health professionals because he felt they were unreliable.

When Taka was twenty, he first began considering suicide. At the time, he did not know about his GID and felt that he could not go on living. He tried to improve his situation by throwing away things he felt he didn’t need, but it only made him feel like he had less to live for. He attempted suicide by pouring gasoline over himself and setting himself on fire but recovered from the burns after three days in a coma. Even after his miraculous recovery, Taka felt he had no reason to live.

At the end of his interview with us on January 30, 2012 for this research project, Taka shared that he wanted to help others who were struggling with being from a sexual minority. This gave the impression that he was thinking of the future. However, on the early morning of July 23, 2012, Taka once again poured gasoline on himself and set a fire. He died that day.



ACCESS TO REDRESS AND SEEKING HELP FOR VIOLENCE

According to the 2011 Research on Violence between Men and Women that the Prime Minister's Cabinet Office conducts every three years, women who were sexually assaulted were reluctant to report the violence to the police or otherwise seek help for several reasons. Some felt "it was embarrassing (46.2 percent of 91 respondents who said they had not sought help in the Research)," some "did not want to recall the incident (22 percent)" and some said, "[I] thought that everything would be all right if I endured [what happened] (20.9 percent)."⁸³ Our respondents expressed similar sentiments.

For transgender people, access to support was different before and after the Gender Identity Disorder legislation⁸⁴ was enacted.

A number of the respondents in our research did not seek help when they experienced violence. The reasons included: "seeking help from someone didn't even come to mind,"⁸⁵ "did not know such [self-help groups] existed,"⁸⁶ "I didn't

think it was acceptable to talk about sexuality or sex. I believed that I was not supposed to tell anyone about it,"⁸⁷ and "this idea that I had to do something [about the situation] by myself was so strong that I could not think of a possibility of seeking help."⁸⁸ They also said that general lack of understanding for LBT people and personal daily experiences of not being accepted by society discouraged them from seeking help. Some respondents who had previously experienced insensitivity when they sought help said they did not want to repeat the experience.

That said, a good number of respondents went to self-help groups for sexual minorities, which might be a reflection of the fact that we identified our respondents through grassroots groups. Except for one respondent, all of them found the help they received from these groups to be appropriate and helpful. Respondents also approached friends, family and partners who they trusted about their experience. Often the fact that someone merely offered to be present and to listen made the respondents feel heard and visible for once.

- Ueki, a lesbian respondent said "Just being able to talk about it to someone who would listen to me and sympathize with me helped very much."⁸⁹
- A pansexual woman, Aoki,⁹⁰ who had attempted suicide when she was in high school, said her close friend made her promise to "give a call if she was thinking about committing suicide," which stopped her from committing suicide.

83 7.7 percent of women indicated that they experienced forced sex by "some of the opposite sex" in the survey in 2011 by the Cabinet Office. Among them, 28.4 percent sought help and 67.9 percent did not seek help. 3.7 percent reported to the police, accessed on November 9, 2012, http://shiawasenamida.org/m05_02_02.

84 Law concerning Special Cases regarding Gender of People with Gender Identity Disorder, Law No. 111, adopted on July 16, 2003; Law on Partial Amendments to the Law concerning Special Cases regarding Gender of People with Gender Identity Disorder, Law No. 70, adopted on June 18, 2008. The Law allows transgender people who are diagnosed as Gender Identity Disorder by two doctors to change their legal genders in family registry, root document for all legal documents and cards under five conditions including sterilization.

85 Ozawa, Yamashita interview, Tohoku region, January 14, 2012 and Kazuko, Masaki interview, Tohoku region, Japan, February 25, 2012.

86 Amami (lesbian), Shimada interview, Kyusyu/Okinawa region, February 5, 2012.

87 Nami, Ragi interview, Kansai region, Japan, February 29, 2012. Neko (bisexual woman) L'Heruex interview, Kansai region, December 26, 2011, also says "Interested in sex or having sexual desire are not considered good [in Japanese society.] I oppressed myself very much by the idea."

88 Mao (transgender woman), Uchida interview, Tohoku region, December 14, 2012.

89 Ueki, Masuhara interview, Chubu region, February 11, 2012.

90 Aoki, Ozawa interview, Kanto region, July 1, 2011.

Several respondents sought help from medical professionals including psychiatrists and psychologists. Some found their interventions appropriate and helpful while others did not. Our interviews showed that there were mental health professionals who thought that their clients' gender identity or sexual orientation was "not the heart of their issue" while our respondents wanted to be heard as LBT people.

- Sachiko,⁹¹ a transgender woman said, "[They] listened to me [at the clinic] for my suffering and they treated me about my physical symptoms. But nothing else was really done about the difficulties I had because of my gender identity." She said, "This was before the enactment of the Gender Identity Disorder legislation."
- Z,⁹² a lesbian respondent, felt "so isolated" being lesbian. She felt sick for being compelled to wear pantyhose at work for being a woman. When she sought counseling from a women's center, she said "the counselor didn't understand difficulties of sexual minorities" because the counselor asked her whether she wanted to become a man.

A group of respondents said they did not ask for or receive any support or assistance to deal with the sexual violence they experienced. The vicious cycle of direct and indirect discrimination they face on a daily basis, the respondents' own fear of revealing their sexual orientation and gender identity, and having no one to turn to for help, pushed LBT rape survivors to the edge. Two respondents said they thought about committing suicide after they suffered sexual violence.

Suicide was culturally familiar to our respondents. In Japan, around 30,000 people committed suicide every year between 1988 and 2012.⁹³ More than half of the 50 LBT people we

interviewed considered committing suicide – five of them actually attempted to kill themselves. Many thought of committing suicide when they felt isolated, or after situations or prolonged periods in which they felt others denied or invisibilized their sexual orientation, gender identity and gender expression.

- Ken, a transgender man who hid his gender identity and lived as a woman because he was in a heterosexual marriage with a cisgender husband, and had children, said, "I didn't actually commit it [suicide], but I wished that my life would end soon. I thought that I'd be happier that way." He said, "I couldn't think there was my future [when I would live as a man]."

LAWS AFFECTING LBT PEOPLE

There are no domestic laws that explicitly criminalize homosexuality or non-conforming gender identities in Japan. Between 1873 and 1880 during the Meiji era, anal sex was illegal, with consensual anal sex subject to ninety days imprisonment and non-consensual anal sex subject to ten years imprisonment.⁹⁴ This was the only time when sexual acts associated with male homosexuality were specifically criminalized. Female homosexuality has never been explicitly criminalized throughout the country's history.

The Japanese Constitution stipulates the separation of organized religion and state.⁹⁵ It is believed that there are no domestic laws based on morality or religion, but in some cases, men, women, and particularly those of diverse sexualities and gender expressions, find that morality affects the application of laws that seem

91 Sachiko, Masaki interview, Chugoku region, Japan, March 17, 2012.

92 Z, Yamashita interview, Tokyo, Japan, January 30, 2011.

93 "Transition of the Number of People Committed Suicide", *Jiji Press*, March 9, 2012, accessed November 10, 2012, http://www.jiji.com/jc/v?p=ve_soc_tyosa-jikenjisatsu.

94 Scanned copy of the original text, Digital Library from the Meiji Era, accessed November 8, 2012, <http://kindai.ndl.go.jp/view/>

95 Article 20, Japanese Constitution, accessed November 8, 2012, http://www.kantei.go.jp/foreign/constitution_and_government_of_japan/constitution_e.html.

neutral. Morality is often expressed through strict expectations as to how women must behave, dress or express themselves, which respondents find hard to separate from the public consensus on morality at any given time. For example, rape victims often face secondary victimization in Japanese courts where judges blame victims for inviting the crime because they dress provocatively or are out at night.

In 2003, the Diet (Japanese Parliament) passed a new legislation that enabled transsexual people to change their sex in the *koseki*,⁹⁶ the legal document that contains all personal status information about an individual. Although the legislation did allow for the legal change of one's gender for the first time, it imposed strict conditions on such changes. Applicants had to be over 20 years old, unmarried, without children below 19 years of age, infertile, and have completed sex reassignment surgery. These conditions – particularly the legally prescribed state-enforced sterilization of trans persons – violate the human rights to health, privacy, non-discrimination, physical integrity, the right to form a family and to decide independently on the number and spacing of children.

Article 177 of the Japanese Criminal Code states that a forced sexual act does not constitute a criminal offence if there is no insertion of a penis into a vagina or if a victim does not (physically) resist the assault.⁹⁷ For transgender women⁹⁸ and for

anyone who is anally raped, much non-consensual sexual conduct cannot be regarded as a crime as it does not meet the above criteria. Further, the resistance criteria is based on stereotyped notions of victim reaction to assault, which often do not play out. The United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) considered the impact of such stereotypes on the treatment of a specific rape case in the Philippines legal system in 2010. One conclusion read, “[T]he Committee stresses that there should be no assumption in law or in practice that a woman gives her consent [to sexual relations] because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence.”⁹⁹ In fact, many of the respondents of our research who had suffered sexual assault said they froze and were unable to react out of shame. Such feelings of shame and powerlessness may be exacerbated where victims already feel disempowered and alienated.

Furthermore, rape is referenced within the context of adultery in the anti-rape law, which leaves single heterosexual women and single LGBT people outside the scope of this law. Usage of the term “adultery,” which means marital infidelity, hides the reality that forced sexual intercourse or any form of unwanted sexual contact within or outside marriage is violence.

The anti-domestic violence law¹⁰⁰ does not explicitly provide protections for couples in same-sex relationships. To date, we are aware of only one district court in western Japan that issued a protection order for a victim of same-sex domestic violence.¹⁰¹ However, we talked with Hiroyuki

96 Law concerning Special Cases regarding Gender of People
with Gender Identity Disorder, Law No. 111, adopted
on July 16, 20013, accessed November 6, 2012, [http://
law.e-gov.go.jp/htmldata/H15/H15HO111.html](http://law.e-gov.go.jp/htmldata/H15/H15HO111.html); Law on
Partial Amendments to the Law concerning Special Cases
regarding Gender of People with Gender Identity Disorder,
Law No. 70, adopted on June 18, 2008, accessed on
November 6, 2012, [http://www.shugiin.go.jp/itdb_housei.
nsf/html/housei/16920080618070.htm](http://www.shugiin.go.jp/itdb_housei.nsf/html/housei/16920080618070.htm).

97 Article 177, Criminal Code, Law No. 45, adopted on April 24,
1907, last amendment made on June 24, 2011, accessed on
November 8, 2012, [http://law.e-gov.go.jp/html/data/M40/
M40HO045.html#1002000000002200000000000000000000](http://law.e-gov.go.jp/html/data/M40/M40HO045.html#1002000000002200000000000000000000)
[0000000000000000000000000000000000](http://law.e-gov.go.jp/html/data/M40/M40HO045.html#1002000000002200000000000000000000).

98 Transgender men who haven't gone through sex reassignment
surgery are treated as women under the law because they
have vaginas, and therefore can be covered under Article 177.

99 Communication No. 18/2008, UN Doc. CEDAW/C/46/D/18/2008, Committee on the Elimination of Discrimination Against Women, Views, September 1, 2010, para. 8.5.

100 Law regarding Prevention from Spousal Violence and
Protection of the Victims, Law No. 31, 2003, last amended on
July 11, 2009 as Law No. 113, accessed on November 8, 2012,
<http://www.gender.go.jp/dv/dvhou.html>.

101 “DV Legislation Applied to Same-Sex Couples for the First
Time. Local Court Recognized the Relationship as De-facto
Marriage and Ruled Protection Order”, *Nikkei Newspaper*,

Taniguchi, Associate Professor at Takaoka University of Law, who explained that there are several similar cases of domestic violence involving same-sex partners where protection orders were granted. Courts, however, do not usually make domestic violence cases public and case details are not known. Judgments in these types of cases depend on the awareness of judges. How accurately and thoroughly same-sex domestic violence is recorded also varies from one police station to another and depends on the awareness of the police officer hearing the complaint of the victim. All this affects how well the voices of same-sex domestic violence victims are heard.¹⁰²

Sexual harassment is defined in the sexual harassment legislation, Law 113 and Law 42, both of which speak to places of employment.¹⁰³ However, the presumption is that this form of violence only occurs to cisgender women and transgender people who legally change their name.

Although there is no legislation regarding the rights of LGBT individuals, the Japanese government has recently put in place several policies that specifically refer to people of diverse gender identity and sexual orientation. In 2008, during the Universal Periodic Review at the United Nations Human Rights Council, the Japanese government declared that it would accept a recommendation to take measures to eliminate

discrimination, including on the basis of sexual orientation and gender identity.¹⁰⁴ The latest Basic Plan on Gender Equality (2010) includes “people who are put in difficult situations because of sexual orientation or people with Gender Identity Disorder.” The latest Outline of Policies for Suicide Prevention Measures (2012) says “[the government] promotes understanding towards sexual minorities, which have a higher rate of people with suicidal thoughts based on a belief that there is lack of understanding, prejudices and other related problems.”¹⁰⁵

Based on the Suicide Prevention Policy Outline, the Ministry of Health and Labor funds *yorisoi* hotlines,¹⁰⁶ which are toll-free hotlines for people in crises. Since March 2012, one hotline was set up for sexual minorities, which received 384,000 calls (3.6%) from April 2012 to March 2013 – out of the over 8.5 million calls taken by the *yorisoi* hotlines combined during that same period. More than a half of the sexual minority line callers are in their twenties and thirties, 6.4% of sexual minority callers shared experiences of sexual violence, and 67.3% said they had or have suicidal thoughts.¹⁰⁷ This state initiative revealed some of the realities that LGBTI people in Japan face for the first time on such a large scale.

In 2010, the Ministry of Education, Culture, Sports, Science and Technology issued a memorandum entitled “Educational Counseling for

August 31, 2010, accessed on November 8, 2012, http://blog.livedoor.jp/tomo_1515/archives/51779379.html.

102 Hiroyuki Taniguchi, Associate Professor, Takaoka University of Law, February 1, 2014.

103 Law concerning Securing Equal Opportunities, Treatment and Others in the Areas of Employment, Law No. 113 adopted on July 1, 1972, Law No. 42 last amended on June 27, 2012, accessed February 20, 2013, <http://www.mhlw.go.jp/general/seido/koyou/danjokintou/dl/kt-ej.pdf>. These laws state: “Employers shall establish necessary measures in terms of employment management to give advice to workers and cope with problems of workers, and take other necessary measures so that workers they employ do not suffer any disadvantage in their working conditions by reason of said workers’ responses to sexual harassment in the workplace, or in their working environments do not suffer any harm due to said sexual harassment.”

104 Conclusions and Recommendations of the Report of the Working Group on the Universal Periodic Review on Japan, Paragraphs 2 and 3, A/HRC/8/44, May 30, 2008, accessed November 8, 2012, http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/IP/A_HRC_8_44_Japan_E.pdf.

105 Outline of Policies for Suicide Prevention Measures adopted on August 28, 2012, accessed November 8, 2012, <http://www8.cao.go.jp/jisatsutaisaku/taikou/pdf/20120828/honbun.pdf>.

106 Suicide Prevention Policy Outline, accessed on November 8, 2012, <http://279338.jp/>.

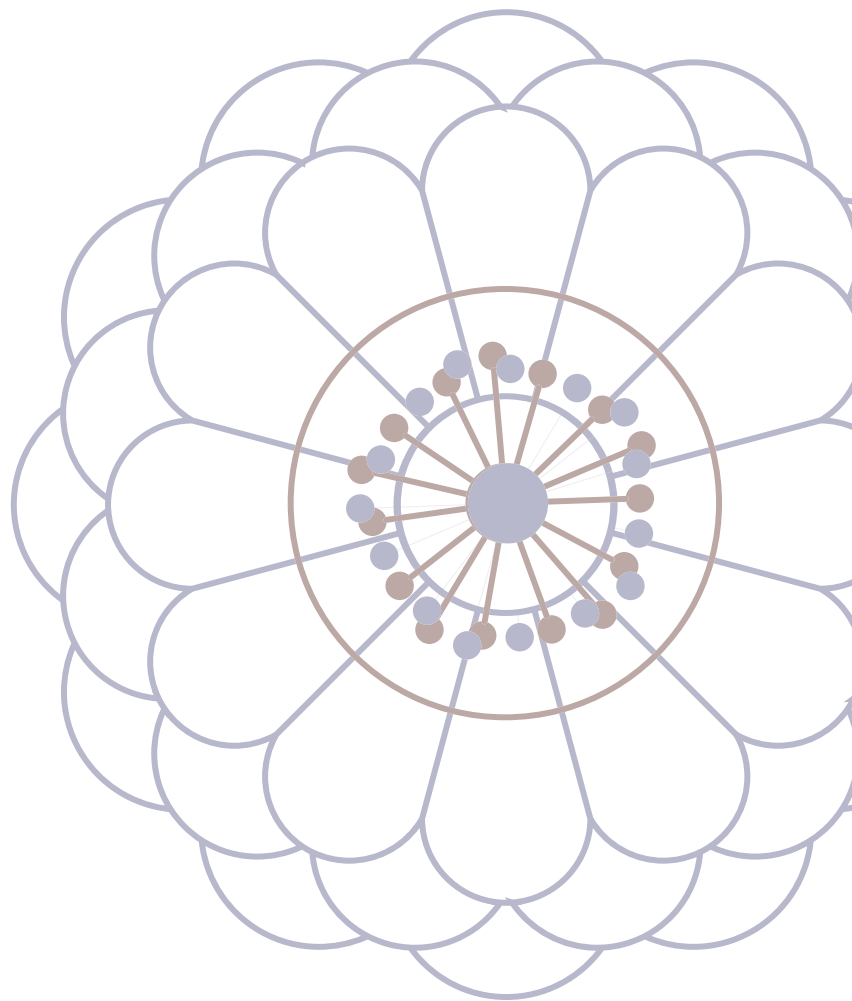
107 *Yorisoi* Hotline Report, Social Inclusion Support Center, August 30, 2013. Younger callers, according to the hotline report, “can be because people of sexual minorities become aware of their gender identity and sexual orientation at younger stage.”

Pupils and Students Facing Difficulties”¹⁰⁸ after a news report about a transgender pupil in an elementary school.¹⁰⁹ The school allowed a transgender girl to dress in girl’s clothes and to be treated as a girl by teachers. The memorandum instructed stakeholders in educational institutions, including teachers, school nurses, school counselors, and staff to cooperate on measures to address the emotions of non-gender conforming students with adequate consideration.

Japan is a party or signatory to the following international conventions: International Covenant on Economic, Social, and Cultural Rights (ratified), International Covenant on Civil and Political Rights (ratified), Convention on the Elimination of All Forms of Discrimination Against Women (ratified except its Optional Protocol), Convention On The Rights of the Child (ratified), International Convention on the Elimination of All Forms of Racial Discrimination (ratified), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment Or Punishment (ratified), and Convention On the Rights of Persons with Disabilities (signed).

In 2008, the UN Human Rights Committee made a recommendation to the Japanese government about the application of the International Covenant on Civil and Political Rights: “The State party should consider amending its legislation, with a view to including sexual orientation among the prohibited grounds of discrimination, and ensure that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples, in line with the Committee’s interpretation of article 26 of the Covenant.”¹¹⁰

In the international sphere, the Japanese government has consistently expressed support for the right to non-discrimination on the basis of sexual orientation and gender identity. The Japanese government supported the 2008 General Assembly statement that everyone had human rights irrespective of sexual orientation or gender identity. Japan also voted for the resolution on human rights and sexual orientation and gender identity at the Human Rights Council in 2011. These moves are positive steps and the government’s interaction with intergovernmental bodies on this issue may well have contributed to recent positive developments in Japan. However, there is still a long way to go for the legal protection for LBT people to be achieved.



108 Memorandum regarding Educational Counseling for Pupils and Students Facing Difficulties, Ministry of Education, Culture, Sports, Science and Technology, April 23, 2010, accessed on November 8, 2012, <http://cshnet.jp/wp-content/>

109 “GID Boy accepted as “girl” in 2nd-grade elementary school in Saitama,” *Kyodo*, February 12, 2010, accessed on January 13, 2014, <http://www.47news.jp/CN/201002/CN2010021201000727.html>.

110 CCPR/C/JPN/CO/5 30 October 2008 para. 29.

RECOMMENDATIONS

The following are our recommendations for different stakeholders whose actions have impact on the lives of LBT people (including those who do not use the terms lesbian, bisexual or transgender but prefer to identify as having other sexual orientations and gender identities).

GOVERNMENT OF JAPAN

We recommend that the government of Japan:

- Mandate comprehensive training to both national and local government officials about the experiences and needs of LBT people and other sexual and gender variant people, specifically focusing on LBT people who are victims of violence. The training should, in particular, target the following sectors: civil counseling service (under the Ministry of Health, Labor and Welfare, Ministry of Justice and Cabinet Office), and the police and officers at correction facilities and schools (under the Ministry of Education, Culture, Sports, Science and Technology). The training should include information about violence in the home and ways to intervene when parents are the perpetrators of violence against LBT members of the family.
- Create support programs for people who are victims of violence because of their sexual orientation, gender identity or gender expression.
- Provide nationwide suicide prevention services for LBT people as stipulated in the latest Policies for Suicide Prevention Measures, adopted by the cabinet on August 28, 2012.
- Ensure that staff at all municipal offices are informed of the government memorandum¹¹¹ restricting who can request the residential certificates of survivors of domestic violence, child abuse and sexual violence.
- Ensure that local government officials who provide services to the general public are trained on the special needs of LBT individuals, and are knowledgeable about the services that LBT survivors of family violence can receive, including livelihood protection allowance.
- Provide life skills and job training for LBT survivors of violence, including dating violence, intimate partner violence, and other family violence. The training should help LBT people become economically independent.
- Revise the Penal Code provisions on rape to allow for the criminalization of forced intercourse that is not limited to penile-vaginal penetration in order to bring justice to all rape victims regardless of their gender, sexual orientation or gender identity.
- Legislate comprehensive anti-discrimination protections that cover discrimination on the basis of sexual orientation, gender identity or gender expression.

SCHOOLS

We recommend that the Ministry of Education mandate that schools:

- Teach their students that it is acceptable to be different from the majority in terms of gender identity, sexual orientation and/or gender expression.
- Accept with sympathy the students who come out or struggle about their sexuality.

¹¹¹ "Residential Certificate Obtainment Restriction Expanded to the Cases of Abuse from October", Kyodo, September 26, 2012; <http://www.47news.jp/CN/201209/CN2012092601002610.html> retrieved February 21, 2013.

- Create a safe space at the school infirmary where students can find sympathetic listeners when they need to talk about their struggles with their sexuality or about violence they might be going through because of their gender identity, sexual orientation and/or gender expression.
- Provide secure safe toilet and lockers for students who may be or are transgender or those who for other reasons do not feel comfortable with the narrow gender definitions.
- Provide comprehensive training to teachers and staff on the experiences and specific needs of those people who are the victims of violence to be able to offer appropriate and sufficient support. The training should tell their attendees that home can sometimes be the most dangerous place and that parents can be perpetrators of violence.

JAPANESE MEDICAL ASSOCIATION (JMA) AND JAPANESE SOCIETY OF CERTIFIED CLINICAL PSYCHOLOGISTS

- Provide comprehensive training to staff about the experiences and specific needs of LBT people who are the victims of violence, including training on how to provide sensitive services that respect their sexual orientation, gender identity or gender expression.

WOMEN'S ORGANIZATIONS

We recommend that women's centers, centers for gender equality that receive public/state funding, and publicly and privately funded shelters for women domestic violence victims/survivors:

- Provide comprehensive training to their staff about the experiences and specific needs of victims of violence, including those who may be victims of violence because of their gender identity or sexual orientation. The goal of this training should be to enable their staff to offer appropriate and sufficient support. The training should include that domestic violence also can happen in same-sex relationships, that transgender men can be victims of domestic violence by being perceived as the "wife" or "girlfriend" by their perpetrators, and that transgender women sometimes face violence because they are perceived as women or girls and thus "inferior."
- Secure an individual shelter room for survivors of violence who are LBT as they may require special consideration because of their appearance.
- Respect the sexuality of those survivors of violence who are sexual minorities as their sexuality is an integral part of their self-identity and could be related to violence they experience.

All stakeholders should work in cooperation with LBT groups in their community, as this is likely to generate a stronger notion of societal acceptance and protection, so that those who have suffered violence because of gender identity, sexual orientation and/or gender expression will feel less isolated and more empowered to push for change.

Finally, for those of you who are LBT or identify as people with other (i.e., non-conforming) sexual orientations and gender identities, and who have experienced violence, we would like you to:

- Acknowledge that you have worked very hard till today in a society where people tend to forget even the existence of people who have a different sexual orientation, gender identity or gender expression. Many certainly do not think of us as their family, friends, classmates, students, coworkers, clients or neighbors.
- Know that although it seems lonely, there are accepting and understanding people in Japan, and there are services and information that can help you.
- Always remember that you deserve respect and dignity.

APPENDIX A:

GLOSSARY OF TERMS

Bi/bisexual refers to an individual who has sexual and romantic desires for both female and male individuals. “*Bi*” is a widely-used shortened form that can be both derogatory and non-derogatory in Japan.

FtM is a term for female-to-male (FTM) transgender or transsexual person who was assigned female at birth but identifies as male.

FtX refers to a female-to-X (FTX) transgender or transsexual person, who was assigned female at birth, and where “X” is used because the person does not identify as female or male. In addition, it is used by women who do not conform to the heteronormative culture and because of that would rather not identify themselves as female.

Gender Identity Disorder is the formal diagnosis for gender dysphoria and can be made by two or more physicians under the Japanese system. A person who wishes to change their gender marker on their official documents in Japan must fulfill various criteria, one of which is to be diagnosed with Gender Identity Disorder.

Homo is a derogatory word usually referring to gay men in Japan that comes from “homo” sexual.

Les is a derogatory word referring to lesbian in Japan, contrary to “lesbian/*bian*.”

Lesbian/*bian* refers to a woman who has sexual and romantic desires for other women. The shortened form “*bian*” is also preferred among lesbians in Japan to casually refer to themselves as being sexually and emotionally attracted to women.

MtF is a term for male-to-female (MTF) transgender or transsexual person who was assigned male at birth but identifies as female.

New half is a Japanese-English word for transgender women or “shemale” that can be used pejoratively. However, transgender women in show business and sex work have reclaimed this word and use it as a self reference.

Non-heterosexual is mostly used by lesbians, bisexual women and other sexual minorities, who are reluctant to identify themselves as lesbian or bisexual, to describe their sexual orientation, meaning “(at least) *not* heterosexual.”

Queer is an umbrella term for, and proudly used by, lesbians, gays, bisexuals, transgenders, and anyone who does not fit the heteronormative culture.

Questioning is a term describing someone’s ambiguous state of sexual orientation or gender/sexual identity. Sometimes the term is used by someone who is not confident enough or does not have the self-awareness to know if she is lesbian/bisexual because she has no experience of same-sex sexual contact.

Okama is a term used to refer to gay men or sometimes transgender women in a derogatory sense. However, some of the gay men have reclaimed this word and use it as a self reference.

Pansexual is a term for an individual who has sexual and romantic desires for individuals of any gender or sexual identity.

Seku mai is an umbrella term in Japanese for sexual/gender minorities.

Trans/transgender refers to an individual whose gender/sexual identity does not match the individual’s birth sex; also referred to as “trans” for short.

APPENDIX B: METHODOLOGY

The Japan team interviewed 50 LBT individuals who were Japanese or Asian nationals living in Japan at the time of the interview. Interviewees were contacted in person by the country coordinator¹¹² or by one of the interviewers who already knew them. Outreach was also done via email through LGBT groups known to the interviewers.

Interviewee candidates did not have to identify themselves as LBT to qualify for an interview. Those who were not included in this research were people who were born biologically female and identified as heterosexual woman and people who were born biologically male and were not transgender. Many interviewee candidates had experienced violence but were often unaware that it was violence and only became aware of it during their interview.

We also interviewed fifteen stakeholders who were known to the country coordinator or other interviewers on the documentation team. Details about the research project were communicated via email or face to face. Only those who agreed to be interviewed became our stakeholder interviewees.

The Japan team was made up of ten interviewers based in Tohoku, Kanto, Chubu and Kansai regions. A Tohoku-based country coordinator identified interviewer candidates through her contacts in sexual minority/LGBT groups. Selection criteria for interviewers included an understanding of LGBT people and issues and understanding of the research project focus.

Potential interviewers participated in a group training or one-on-one training session presented by the country coordinator who was trained by IGLHRC. After the training, only candidates who showed their willingness to conduct interviews for this research project were selected for the documentation team.

IGLHRC developed the documentation tools with

input from the participating country teams. The average length of the Japan interviews was two hours for LBT respondents and one hour for stakeholders. LBT interviewees were asked about their 1) background, 2) awareness and attitudes toward sexual orientation and gender identity, 3) coming out, 4) experiences of discrimination, 5) experiences of violence because of sexual orientation and gender identity (physical, emotional, sexual, by state institutions), 6) impact of violence, and 7) experiences of seeking help. Interview venues were LGBT community spaces, cafes, karaoke rooms, conference rooms, women's centers or interviewee's residences if they were convenient and safe for our respondents.

Prior to an interview, the interviewer explained the theme, purpose, use of the research data, and confidentiality protocol. IGLHRC's protocol required all interviewers to make available a list of mental health and counseling resources for LBT interviewees. A wellness plan was also part of the documentation protocol. The government-sponsored hotline served as a crucial resource for both interviewers and interviewees to use as needed. After a respondent agreed to be interviewed and signed the consent form, the interviewer explained the format, procedure and length of the interview. Respondents were informed that they could take a break from an interview whenever they wanted to and request for the interview to stop at any time. They could request that their recorded interview be deleted after the interview.

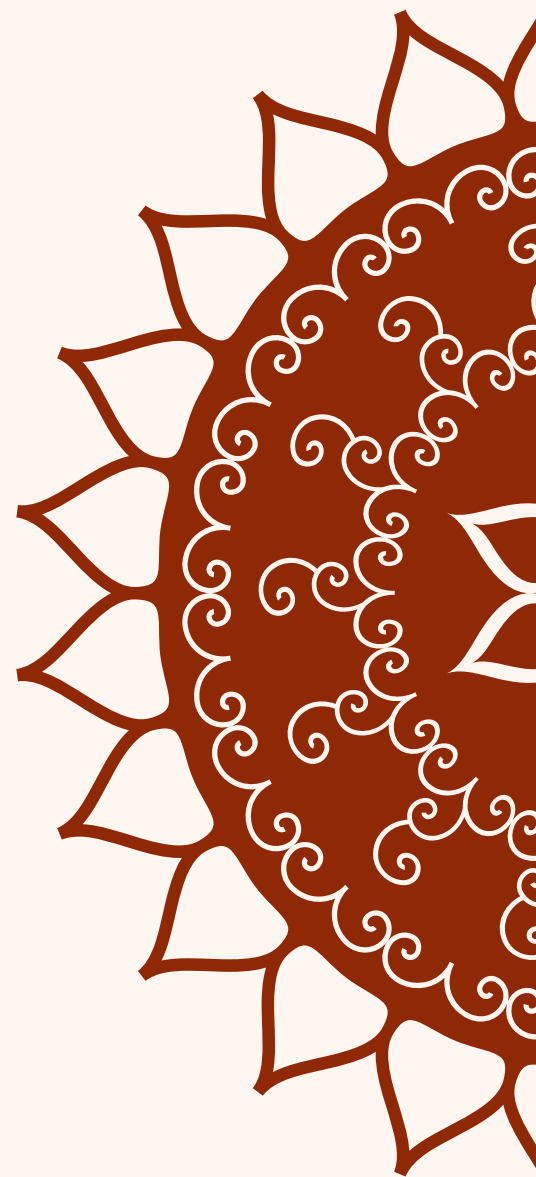
Interviews were conducted from November 2010 to March 2012; all were conducted in Japanese except for one stakeholder interview conducted in English. Interviews were transcribed in Japanese. Data for this country chapter was obtained from coded and un-coded original Japanese transcripts. Data analysis was conducted by the Japan country team, which received data analysis training from IGLHRC.

In 2011, just as the documentation was starting, the Japan team experienced a devastating tsunami and earthquake, forcing the project to be suspended for nearly three months. The Japan Coordinator had to start the project from scratch – with a new team of interviewers who she trained, using a condensed version of the training provided by IGLHRC to the core research team prior to the launch of this project.

112 Azusa Yamashita, Co-director, Gay Japan News.

The background is a solid orange color with a repeating pattern of stylized mandala designs. These designs include circular floral motifs with intricate scrollwork and petal patterns, as well as larger, more abstract floral shapes. The patterns are rendered in a slightly darker shade of orange, creating a subtle texture.

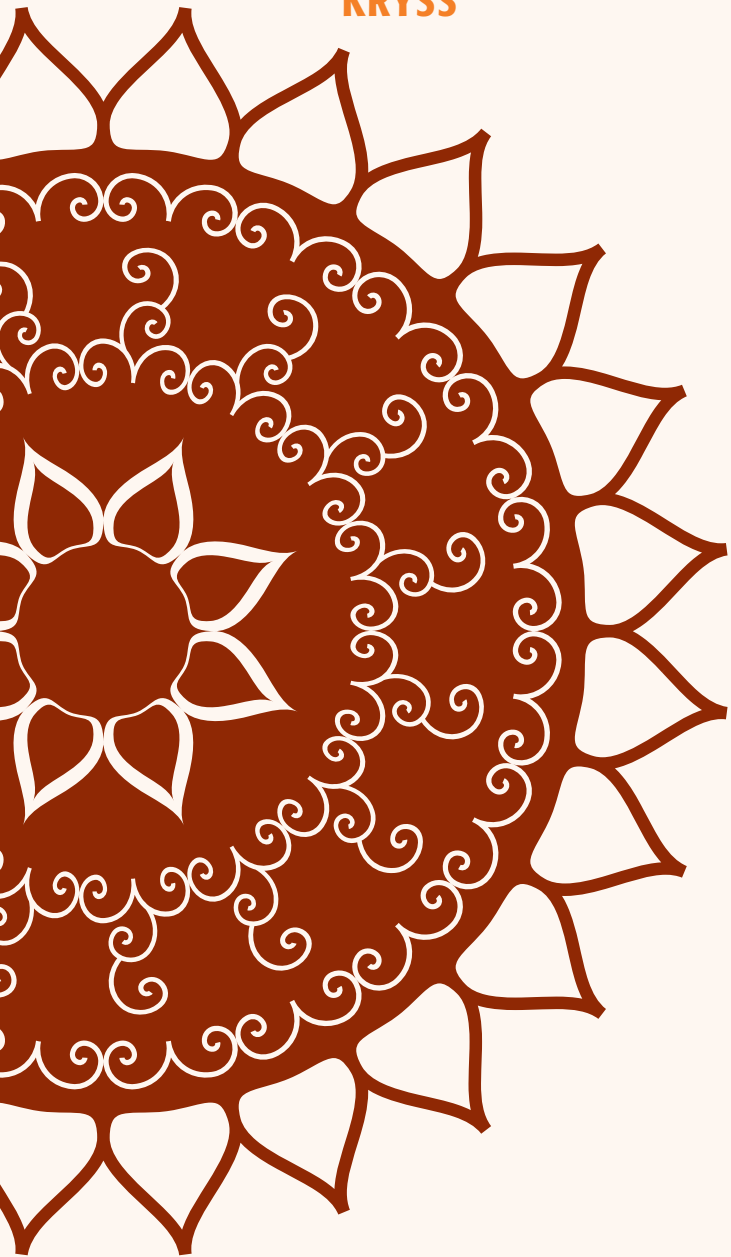
MALAYSIA



ON THE RECORD

Violence Against Lesbians, Bisexual Women
and Transgender Persons In Malaysia

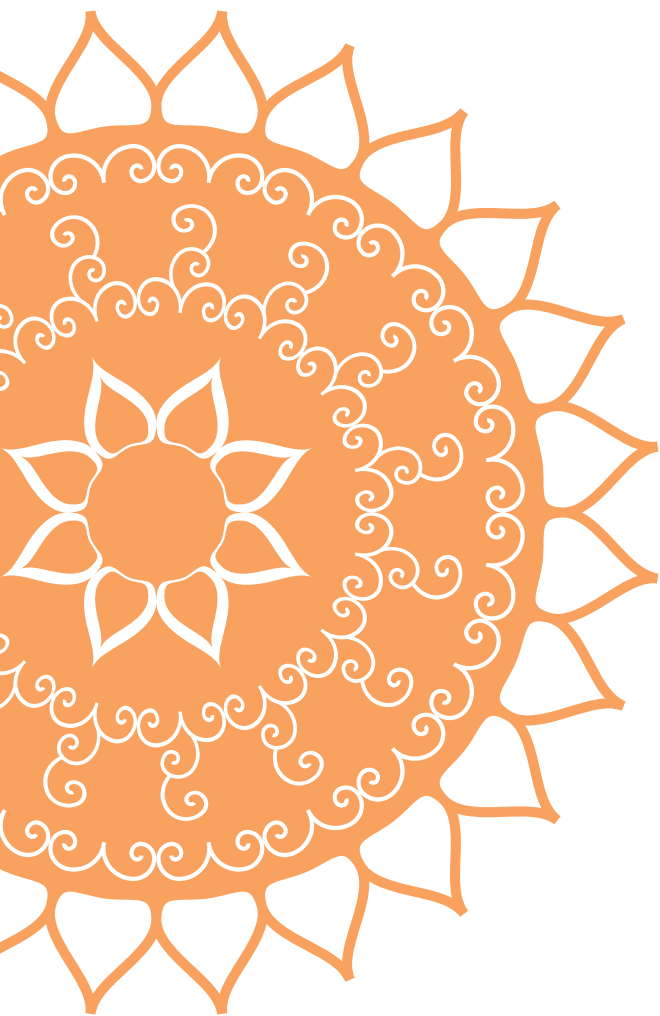
KRYSS



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INTRODUCTION

The Malaysian team is part of a regional research project involving Japan, Pakistan, Philippines and Sri Lanka. All country teams adopted a standardised methodology (semi-structured interview questionnaires) developed by the International Gay and Lesbian Human Rights Commission (IGLHRC).

The documentation team comprised five interviewers who collected data on violence and discrimination experienced by LBT persons between November 2010 and November 2011. The interviewers primarily relied on the snowballing method, a method relying on referrals by contacts such as community leaders and interviewees. The community leaders either privately contacted or used social media (Facebook) and closed mailing lists to encourage their members in their respective networks to participate in the research.

The methodology was translated from English into Malay and Chinese for use in Malaysia. The methodology was not translated into Tamil as we did not anticipate many interviewees who only spoke Tamil, however, one interview was conducted primarily in Tamil. Interviewers simplified and shortened the methodology to avoid repetition of questions. Interviewers used local and colloquial terminology (pengkid, mak nyah, ladyboy) in addition to the more common terminology like lesbian and transgender. They used this local terminology even for interviews that were conducted in English, since Malaysians tend to be bilingual.

In keeping with the focus of the regional research project, we will refer to our interviewees as lesbians, bisexual women, trans persons, transmen or transwomen. For brevity, we will use the acronym LBT persons except when referring to a particular group of interviewees.

Although the range of interviewees for this research cannot represent the full spectrum of LBT persons nor all of their experiences of violence, stigma and discrimination in Malaysia, this research succeeds in highlighting both critical and outstanding issues related to the human rights of LBT people in Malaysia.

INTERVIEWEE DEMOGRAPHICS

A total of 50 interviews were conducted with LBT persons and 20 interviews with stakeholders, such as educators, lawyers, and representatives from the women's movement, all of whom have articulated their support for the LGBT community in Malaysia. However, the level and visibility of their support varies according to the nature of their work and pressure faced from State and non-State actors. Five LBT interviews were later excluded from the pool and this report because they self-identified as gay men and were outside the parameters of the research. Two stakeholder interviews were also excluded because their information was unrelated to this research.

There were difficulties locating bisexual women for this research because they are more invisible, partly due to discrimination that bisexual women face within the lesbian community.¹ There were similar difficulties locating pengkid interviewees because of limited contacts with people who identified themselves as pengkid.

The Malaysian research findings are based on 45 semi-structured interviews with people who identify themselves as lesbian (16), bisexual (3), pansexual² (1), queer (1), pengkid (3), transman (8) and transwoman (13). Their ages range from 20 to 51 years old. Two interviewees chose not to "label" themselves but were at the time of the interviews in relationships with pengkids. Three transgender persons identified themselves as pansexual, bisexual and lesbian. Among these, 26 are Malays, 13 are Chinese, 5 are Indians and one is Punjabi.

Most of the transwomen interviewees were from lower income backgrounds. The lesbians, bisexual women and transmen were mostly from middle

1 Some people in the lesbian community see bisexual women as indecisive, not trustworthy or not to be taken seriously because of their attraction to both women and men.

2 Pansexual refers to people who have fluid sexual orientation.

and higher income backgrounds. The snowballing method used to identify interviewees drew LBT people who were within the activist or social networks of those who did outreach for the research.

Twelve of the 45 interviewees had completed secondary education; 21 completed tertiary education; six qualified with diplomas; 14 had obtained Bachelor degrees, and one interviewee had a Masters degree. One transgender person out of the thirteen transgender people we interviewed had a diploma; three others had bachelor degrees, while four had dropped out of school.³

MALAYSIA

PRIMARY LOCATION OF LBT INDIVIDUALS INTERVIEWED



More than half of the interviewees reside in the federal capital, Kuala Lumpur, and the state of Selangor. Most of the interviewees from Selangor are from Petaling Jaya, a satellite town of Kuala Lumpur. Sixteen out of 45 interviewees were from Penang in the north of the country.⁴ The resulting

3 There are more school dropouts among the transwomen interviewees due to family rejection, lack of acceptance in schools, and employment discrimination. These factors have a combined adverse impact on transwomen, especially if they are also from poorer families and forced to live on the fringe of society.

4 Kuala Lumpur, Selangor (Petaling Jaya) and Penang are major cities in Malaysia with better public transportation and facilities.

geographical concentration of the interviewees is likely due to the snowballing method used to identify interviewees.

Almost all 45 interviewees said that they became aware of their same-sex attraction and/or gender identity or expression at a very young age – four or five years old. “Same-sex attraction” was also a determining indicator for transgender interviewees as young children in their road to discovery of their gender identity. Interviewees who were not “outed” (sexual orientation or gender identity revealed without a person’s permission or knowledge, or inadvertently) by their friends or family members revealed their own identities (i.e., came out) to their parents when they were in their twenties or older. While economic reasons, religion and dependency on parents primarily influenced when people chose to come out, the culture of respecting elders and not wanting to upset parents were equally influential factors. The phrase “know but don’t ask” or similar sentiments were commonly expressed during the interviews.

Nine of thirteen transwomen interviewees shared that they started “cross-dressing” at a very young age – six or seven years old – and had friends or a support network to guide their gender transition. Those without a support network of peers or other transwomen friends transitioned later – some in their late twenties.

Transmen interviewed for this research were certain of their attraction towards women but were unsure of their gender identity, due to lack of information, not having the local vocabulary to self-identify, and a significant absence of a transmen’s support network in the country. They tended to remain in lesbian circles and identified as butch lesbians. Four of the eight transmen started transitioning comparatively much later – in their thirties and forties.

Social movements and human rights activism are mostly centred in Kuala Lumpur, Selangor and Penang. In fact, most of the rights-based Non-Governmental Organizations (NGOs) in Peninsula Malaysia are situated in Petaling Jaya.

Three pengkid interviewees said they liked wearing boyish attire from a young age and preferred to play with their male siblings. Pengkids have always been visible in Malaysia and are not seen as a new phenomenon within the LBT community. It is an identity largely adopted by a segment of gender non-conforming women who are ethnically Malay (and ostensibly Muslims).

COUNTRY CONTEXT

Lesbians, bisexual women, queer⁵ and transgender persons (transwomen⁶ and transmen⁷), and other gender non-conforming people and communities currently face rising hostility, discrimination and abuses in Malaysia. They are unprotected by a political system, which is geared towards promoting and imposing a specific vision of Malaysia.

While Malaysia may have inherited the British colonial laws that prudishly criminalise consensual anal and oral sex acts (carnal intercourse) between adults, it is the current State’s identity politics and the institutional strengthening of Malaysia’s Islamization that has witnessed the increasing importance and influence of state-administered syariah (sharia) or Islamic law.⁸ Syariah laws criminalise Muslims for lesbian sexual relations (*musahaqah*), sex between men (sodomy), sex that is considered “*against the order of nature*” (*liwat*), and for “posing” or “impersonating” as the opposite sex (e.g., cross-dressing). Government representatives actively reject sexual orientation and gender identity issues as human rights issues in various national, sub-regional (such as, at the Association of Southeast Asian Nations/ASEAN Intergovernmental Human Rights Commission) and international fora.

5 The term “queer” is used as a reference to people whose sexual orientations are fluid and as an umbrella term that rejects the binary and often oppositional understanding of sex (male-female) and sexuality (homosexual-heterosexual).

6 Male-to-female transgender persons.

7 Female-to-male transgender persons.

8 Syariah laws are Islamic laws.

Moral policing rose to greater heights in Malaysia in the 1980s. It was the same time as when Mahathir, as Malaysia's fourth Prime Minister, pursued an arguably aggressive Islamization agenda. He systematically established Islamic mechanisms and institutions that would grow in their influence over all decision-making in the country – from Ministries and Federal government agencies to the judiciary⁹ and the Office of the Attorney General. For example, in 1983, a *fatwa*, or a religious edict, was introduced to ban sex reassignment surgery (SRS) for transgender persons, also known as transgender people. Prior to the banning, sex reassignment surgeries were in fact carried out in Malaysia by four surgeons, including a Malay Muslim doctor, who performed the surgeries in the University Hospital, a semi-government hospital. Following the fatwa, the hospital-based SRS services were shut down, despite doctors' attempts to convince the religious authorities to allow the surgeries to go forward.¹⁰

Fatwas prohibit tomboys or tomboy behaviour.

A 2008 survey of 804 Malay Muslims from five states in Malaysia (three administered by UMNO and two by PAS), describes the kind of Islam practiced in Malaysia today and enforced through state institutions as self-righteous, arrogant, supremacist, patriarchal, misogynist and puritanical.¹¹ Prior to the colonization of Malaysia by the British, sexual and gender diversity were widely tolerated in the country and also in the region. Old historical texts and manuscripts between the fifteenth to nineteenth centuries such as the *Sejarah Melayu* or Malay Annals, bear evidence that non-heteronormative people existed and were accepted in the Malay society. Michael G. Peletz suggests that *sida-sida*,

palace official or eunuchs, who lived in the inner chambers of the palace, would wear women's clothes and perform tasks that were usually performed by women at that time. Some engaged in sexual relations with men and some with both women and men.¹² One Malay anthropologist, Shamsul AB, provides a first-hand account of having seen *sida-sida* in the royal palace as a child. He recalls them as "typically male-bodied individuals who assumed many of the mannerisms of females along with female or 'mixed' (dual-gendered) attire, and were believed by the population at large to share normative female erotic orientations toward men, or to be celibate and asexual like eunuchs..."¹³ He further affirms that there had been "... both considerable tolerance for and acceptance of *pondan* [transvestites]" by the Malay society in the Malaysian Peninsula until 1980's.¹⁴

In fact, a reflection of this history and acceptance was evident in the late 1980s.¹⁵ In 1987, the Welfare Department granted the Persatuan Mak Nyah¹⁶ Wilayah Persekutuan (Association of Transsexuals in Federal Territory) 50,000 Malaysian Ringgit to start small businesses. According to Khartini Slamah, a transgender activist, in her article *Mak Nyahs in Malaysia*, the association was shut down after about three years as a result of a religious intervention.¹⁷

Hostility towards the LGBT community intensified in September 1998 when Mahathir dismissed Anwar Ibrahim, his then Deputy Prime Minister, on grounds of corruption and allegedly having sexual

9 The loss of an independent judiciary was sealed with the severe split in UMNO in 1987 and the direct challenge against Mahathir as President of UMNO at the time.

10 Jeswan Kaur, "Let the Doctors Decide," *The New Straits Times*, December 12, 2005, <http://kasihhoney.blogdrive.com/archive/176.html>.

11 Riaz Hassan. *Inside Muslim Minds*. (Carlton, Victoria: Melbourne University Press, 2008), 49–54, 286–287.

12 Michael G. Peletz, *Gender Pluralism: Southeast Asia Since Early Modern Times* (New York, NY: Routledge, 2009).

13 Ibid.

14 Michael G. Peletz, *Reason and Passion: Representations of Gender in a Malay Society*, (Berkeley, Los Angeles and London: University of California Press, 1996).

15 It is unknown if State actors were even aware of the existence of transmen at the time. Until today, visibility of transmen is still low, since most would prefer to remain in stealth mode and undetected.

16 A local term for male-to-female transgender person or transwoman.

17 Slamah, Khartini, "Mak Nyah in Malaysia," *Sexuality, Gender and Rights: Exploring Theory and Practice in South and Southeast Asia*, SAGE (2005), 105–106.

relations with two men. Following the dismissal of Anwar Ibrahim, the People's Voluntary Anti-Homosexual Movement (PASRAH) was formed by members of the United Malays National Organization (UMNO), the dominant Malay political party of the ruling coalition since Malaysia's independence in 1957, to "wipe out homosexuality"¹⁸ in Malaysia. PASRAH, which no longer exists, was chaired by Ibrahim Ali,¹⁹ a former Member of Parliament and present member of UMNO as well as the current President of Pertubuhan Pribumi Perkasa Malaysia (PERKASA), a Malay supremacist and nationalist organization that advocates for the protection of Malay-Muslim rights. PERKASA has recently expanded its political agenda to include an aggressive anti-LGBT stance.



In October 2008, the National Fatwa Council announced a fatwa (Islamic edict or opinion) against *pengkid*, a term that loosely translates as tomboys for individuals in the Malay Muslim community who fall within the spectrum of lesbian butch and transman (see Glossary for more details).²⁰ The announcement of the fatwa against tomboys sparked protests from people, notably non-Malay Muslims. Many Malay Muslim conservatives, such as members of the National Fatwa Council, nationalist

pressure groups, politicians, bloggers,²¹ and some members of the public, saw these protests of non-Muslims against the *pengkid* fatwa as interference in an Islamic matter.²² Presently, fatwas have been gazetted (officially announced to the public and published in a journal or state controlled newspaper) in the state of Malacca and the federal capital, Kuala Lumpur, to prohibit tomboy or tomboy behaviour.

In November 2011, Seksualiti Merdeka,²³ an annual sexuality rights festival, was banned by the Royal Police of Malaysia. The authorities deemed Seksualiti Merdeka as a devianist cult, a free sex party²⁴ and a threat to national security.²⁵ Subsequently, Seksualiti Merdeka and its organisers as well as allies were investigated under Section 298A of the Penal Code²⁶ and Section 27A(1)(C) of the Police Act 1967²⁷ for creating disunity and disharmony in Malaysia.²⁸ Many prominent activists including some pro-Islamists saw the banning of Seksualiti Merdeka as politically motivated by

18 Walter Williams, "Islam and the Politics of Homophobia: The Persecution of Homosexuals in Islamic Malaysia Compared to Secular Chin," *Islam and Homosexuality*, Volume 1, edited by Sahib Samar, 12, California: ABC-CLIO.

19 Ibid.

20 Julian Lee. *Islamization and Activism in Malaysia*, (Singapore: ISEAS Publication), 132.

21 "Surat Terbuka Rakyat Malaysia kepada NGO Bukan Islam : Jangan Cabar Fatwa !!!" (Open Letter by Malaysians to Non-Muslim NGO: Do not challenge Fatwa!!!), *Ustaz Moden's Weblog*, <http://ustazmoden.wordpress.com>.

22 The controversy was used to further promote ethnic and religious divides between Malay Muslims and non-Malays in Malaysia. Steven Daniel, "IGP to Non-Muslim NGOs: 'Stay out of Muslim matters,'" *The Star Online*, accessed on November 13, 2008, <http://www.thestar.com.my>.

23 Seksualiti Merdeka is an annual sexuality rights festival held in Kuala Lumpur, and each year since 2008, the organisers and supporters comprise a coalition of Malaysian NGOs and individuals. Seksualiti Merdeka means "Sexuality Independence".

24 Clara Chooi, "Marina Mahathir livid over 'free sex' slur on Seksualiti Merdeka," *The Malaysian Insider*, November 7, 2011, <http://www.themalaysianinsider.com>.

25 Jo-Ann Ding, "Seksualiti Merdeka: Threat to national security?", *The Nut Graph*, March 12, 2012, <http://www.thenutgraph.com>.

26 Section 298A of the Penal Code empowers police to take action against anyone who causes disharmony, disunity, feeling of enmity, hatred, ill-will or prejudice or for the maintenance of harmony or unity on the grounds of religion.

27 Section 27A(1)(C) of the Police Act 1967 empowers police to act against any activity that takes place on private premises but is deemed prejudicial to the interest and security of Malaysia or that would excite a disturbance of the peace.

28 Ibid.

the Malay ruling elite. They pushed the discourse of sexual orientation and gender identity into the public sphere again, with even greater intensity and aggression, creating another wave of fear for the LGBT community. In response, community leaders and Seksualiti Merdeka organisers filed a judicial review of the police action. However, the judge, Justice Rohana Yusof, ruled in favour of the authorities and dismissed the judicial review.²⁹

Relationships between two women or between a gender-variant person and a woman are seen as an affront to the dominant patriarchal and heterosexist culture in Malaysia.

Following the ban of Seksualiti Merdeka, there were more concerted efforts by the ruling coalition and conservative groups to “curb homosexuality.” In April 2012, Muhyiddin Yassin, current Deputy Prime Minister and Minister of Education, called on school counsellors to curb the spread of LGBT groups. According to him they represent a “negative culture, which was previously prevalent only in Western countries. He pledged 100,000 Malaysian ringgit to the Malaysian International Counselling Association to improve the skills of counsellors to tackle the emergence of LGBT groups in a “strong and effective manner” (a euphemism for depriving such groups of their right to freedom of association).³⁰ In July 2012, Najib Razak, Malaysia’s current Prime Minister, declared “LGBT, liberalism and pluralism as enemies of Islam” and called on the people to defend the government from those foreign influences.³¹

Following his statements, in September 2012, the

Teacher’s Foundation of Malaysia and Putrajaya Consultative Council of Parents and Teachers Associations released guidelines, endorsed by the Ministry of Education, to help parents identify gay and lesbian “symptoms” in their children.³² In March 2013, a play titled *Asmara Songsang* (Deviant Love) was performed in Istana Budaya (the Palace of Culture), which is a national performing arts space, with content that reduced LGBT individuals to predatory thugs. They were portrayed as recruiting young people into their “club,” funded by the opposition party to carry out the party’s “agenda.” The play ended with all the LGBT characters being struck by lightning. At the close of the play, the actors rallied their audience to reject LGBT individuals. This play was supported by the Ministry of Information, Communications and Culture,³³ and was performed across the country at government-funded colleges, universities, technical institutes and teacher training centres.³⁴ Presently, the Malaysian Film Censorship Board prohibits any positive portrayal of LGBT characters. All LGBT characters must die or repent at the end of a movie or television drama.³⁵

The State’s ruling coalition owns and controls most of the mainstream media, making it easy for the government to propagate anti-homosexual and transgender messages to the public.³⁶ On March 31, 2013, *Utusan Malaysia*, a national Malay language newspaper published an article in the family section, titled “Together Against Deviant Culture,”

29 Justice Rohana Yusof, in her decision, said that Section 21 of the Police Act empowers the police to impose a ban pending investigation and that the application was academic in nature. See “Seksualiti Merdeka fails to get ban reviewed,” Seksualiti Merdeka website, <http://www.seksualitimerdeka.org>.

30 Anna Leach, “Malaysian Deputy Prime Minister says LGBT people need counselling,” *Gay Star News*, April 5, 2012, <http://www.gaystarnews.com/node/1847>.

31 Hafidz Baharom, “Najib: LGBTs, liberalism, pluralism are enemies of Islam,” *The Malaysian Insider*, July 19, 2012, <http://www.themalaysianinsider.com>.

32 Susan Loo, “Guidelines to identify gay and lesbian symptoms published,” *FreeMalaysiaKini2* website, September 13, 2012, <http://www.freemalaysiakini2.com> (site discontinued).

33 Alia Ali, “Oh, Inverted World,” *Kakiseni*, March 12, 2013, <http://blog.kakiseni.com>.

34 Kate Hondal, “Anti-gay musical tours Malaysian schools and universities,” *The Guardian*, March 28, 2013, <http://www.guardian.co.uk>.

35 Nina Hidayat, “Bad or Ugly: Malaysian Education Ministry Supports Gay Guidelines,” *Venus Buzz*, <http://www.venusbuzz.com>.

36 UMNO owns 49.77 percent of *Utusan Malaysia*, a Malay daily that propagates Malay supremacist ideas, and the daily has run several articles to discredit Anwar Ibrahim by associating him with the LGBT movement. Ida Lim, “Umno owns 49.77pc stake in *Utusan*, court told,” *The Malaysian Insider*, August 13, 2012, <http://www.themalaysianinsider.com>.

citing the gay marriage debates in France. The author called on Malaysians to protect the family institution against the menace of LGBT people.³⁷

The Malaysian government's rigorous efforts to curb vice have increased stereotyping of LGBT persons as criminals. As a result, many gay establishments such as clubs and saunas are being shut down or targeted by the enforcement agencies and media, thus regulating LGBT persons' participation in the public sphere by leaving them very limited physical spaces to socialise. Some establishments have taken precautionary measures to avoid the attention of public morality enforcement agencies and imposed special restrictive measures on LGBT patrons. Interviewees in the northern state of Penang reported that several clubs in that state officially prohibit entry to transwomen, and where exceptions are made, club and sauna owners impose behaviour restrictions. Butch lesbians reported mandatory beverage purchases as a condition for entry into clubs, and drinks were sold at much higher prices to butch lesbians and pengkid.

INTERNATIONAL AND REGIONAL HUMAN RIGHTS TREATIES

Malaysia has ratified three international human rights conventions – the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995, the Convention on the Rights of the Child (CRC) in 1995, and the Convention on the Rights of Persons with Disabilities (CRPD) in 2010. In 2010, the government removed three of eight initial reservations for CEDAW,³⁸ leaving reservations

to Article 9(2)³⁹ and Article 16(a)⁴⁰ (c)⁴¹ (f)⁴² (g)⁴³ pertaining, in particular, to equality upon entering into marriage and within marriage.

These reservations reflect Malaysia's firm belief in the position of men as the decision-makers and heads of households, and the notion that women and men have different rights with regard to their children. Domestically, the government has yet to pass an act for the protection and promotion of women's rights. While article 8(2)⁴⁴ of the Federal Constitution was amended in 2001 to include a right to non-discrimination on the basis of gender, many Muslim women are still denied equal rights when seeking reparation on divorce and inheritance issues through the syariah courts.⁴⁵ Non-Muslim women also suffer from the lack of legislation ensuring their right to non-discrimination.

In 2006, Malaysia was elected as a member of the United Nation Human Rights Council (UNHRC), then re-elected for a second term in 2010 after garnering support from 179 out of 188 countries.⁴⁶

39 9(2) States Parties shall grant women equal rights with men with respect to the nationality of their children.

40 16 (a) The same right to enter into marriage

41 16 (c) The same rights and responsibilities during marriage and at its dissolution

42 16 (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

43 16 (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation

44 Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

45 Honey Tan, "Measuring Up To CEDAW: How Far Short Are Malaysian Laws and Policies?" March 17, 2003, Women's Centre for Change, Penang, <http://www.wccpenang.org/files/docs/honey-measuring-up-to-cedaw.pdf>.

46 Malaysia's membership on the Human Rights Council is despite its poor track record on human rights, especially on minority and vulnerable communities, such as refugees,

37 Hafizahril Hamid, "Bersatu menentang budaya songsang," *Utusan.com*, March 31, 2013, <http://www.utusan.com.my>.

38 Meera Samanther, "Press Statement from the Joint Group for Gender Equality," WAO.org, July 6, 2012, <http://www.wao.org.my>.

In March 2012, Malaysia and 56 other members of the Organization of Islamic Conference (OIC) walked out in protest during the UN High Commissioner's presentation on the status of the human rights of LGBT people.⁴⁷

Similarly, in 2009, the Association of Southeast Asian Nations (ASEAN) established the ASEAN Intergovernmental Commission on Human Rights (AICHR). AICHR was tasked with the responsibility of drafting a human rights declaration for ASEAN to standardise human rights in the region.⁴⁸ Malaysia opposed the inclusion of sexual orientation and gender identity in the ASEAN Human Rights Declaration and lobbied other ASEAN members to do the same.⁴⁹

MANIFESTATIONS OF VIOLENCE

STATE VIOLENCE

Violence in the Name of Religion

LBT people whose gender expression was more visible, meaning they are not able to pass as “straight” (heterosexual) or as cisgender (people whose gender identity and gender expression conform with the gender they were born with) were more likely to be targeted for violence and discrimination. Gender non-conformity is perceived

migrant workers, indigenous people and LGBTQ people. “Malaysia re-elected to UN Human Rights Council,” *The Star Online*, May 14, 2010, <http://thestar.com.my>.

47 Eesha Pandit, “UN Human Rights Council makes slow progress for LGBT rights,” *Feministing.com*, March 13, 2012, <http://feministing.com/2012/03/13/un-human-rights-council-makes-slow-progress-lgbt-rights/>

48 Yohanna Ririhena, “First ASEAN human rights declaration criticized,” *The Jakarta Post*, October 29, 2012, <http://www.thejakartapost.com/news/2012/10/29/first-asean-human-rights-declaration-criticized.html>

49 Malaysia, Singapore and Brunei were three countries in the ASEAN coalition, which blocked consensus on the inclusion of SOGI in the ASEAN Human Rights Declaration.

as an overt challenge to societal expectations. Transwomen⁵⁰ in particular tended to experience more oppressive and discriminatory behaviours from State actors, namely police officers and Islamic religious officers. These State actors arbitrarily detained transwomen, stopped transwomen at unauthorised roadblocks, questioned them with sexual undertones, and arrested transwomen for violation of syariah law prohibitions against dressing in gender-nonconforming clothing and displaying gender-nonconforming behaviour in public.⁵¹ The transwomen interviewees also reported that Islamic religious officers teased, humiliated, intimidated and threatened them.

Thirteen transwomen interviewees said that their arrests by police officers or officers of state level Islamic departments took place while they were out in public – performing in clubs, hanging out or having meals outdoors. Two transwomen who were stopped at roadblocks by police officers in Penang and Kuala Lumpur reported that the police asked if they “needed company,” hinting that the officers wanted to have sex with the transwomen.⁵² Another transwoman reported that two police officers in Penang asked her and her transwomen friends for “protection money” – about fifteen to twenty Malaysian ringgit (USD \$5-6) in exchange for not being arrested.⁵³

Severity of violence directly correlated with the interviewee's socio-economic class, actual or perceived ethnic heritage, and religion. For instance, Muslim transwomen from lower income groups, especially sex workers and showgirls, faced more severe treatment by State actors and were more often persecuted under syariah laws than Muslim transwomen from higher economic strata.

50 Male-to-female transgender persons.

51 The Islamic religious authorities have no power to arrest although they have reportedly detained many Muslim transwomen for various syariah transgressions. It is unclear as to why police officers are making arrests under syariah laws.

52 Ann, interview with research team member, November 2010. Erika, interview with research team member, June 2011.

53 Jess, interview with research team member, March 2011.

JAIME

Jaime is a 47-year-old Chinese Malaysian woman, who says she was “born in the wrong body.” At the age of five, she was molested by a neighbourhood boy, and later by her art teacher. At the age of eleven, Jaime was certain of her attraction to men, but the mix of shame and pleasure that resulted from her childhood abuse had made her afraid and wary of people.

Her family shunned her and denied her identity as a girl as she was growing up. Jaime often felt that she had brought embarrassment to the family, especially to her parents. Her mother would say, “You would never amount to anything much.” Jaime felt routinely pressured to suppress her sexual and emotional expressions, and as a result of this continuous pressure, she attempted suicide at the age of fourteen.

Jaime looked to God for answers to the purpose of her existence in the world. As a staunch Catholic, it was difficult for her, even as a teen, to be repeatedly told by the church that it was wrong to masturbate or to discover one’s sexuality. In her early adult years, Jaime felt she was finally ready to have intimate relationships with men, but she continued wondering if she was a gay man or a woman trapped in the wrong body. She said, “When guys touched me, I liked it. I wanted to go further. I like to be hugged, I like to be kissed, I like affection, but this thing inside me will tell me, ‘You’re not female’ and ‘You’re not gay.’”

Her family’s continued denial of who she was and the church’s continued rejection of her gender identity increased Jaime’s feelings of insecurity and self-degradation, and she often had thoughts of suicide although she never made any further attempts. Jaime suppressed her desire to wear female clothes and tried convincing herself that she did not have the desires of a woman. When Jaime became a college lecturer, she

suppressed her gender expression so that she could be a “good role model” to her students. She knew that cross-dressing would expose her to ridicule, and this further increased her anxiety.

Since Jaime grew up in the 1980’s, when there was very limited access to information and communication with people from the transgender community, she felt even more isolated and depressed. It was only in 2002 at the age of 39 that Jaime finally decided to start her physical transition and arranged for a sex reassignment surgery in Thailand. She said, “I wanted to do my vaginoplasty first because I wanted to continue teaching. I thought I should do my breast augmentation later. I wanted a slow transition. I was never a cross-dresser, I never showed my feminine or female side except for in my character [behaviour]. I don’t know why. I guess I was afraid to be ostracised.” It was at the hospital in Thailand that she first found genuine support and acceptance from the trans community.

For four years after her operation, Jaime struggled with how to change her sex on her national identification card because her appearance did not correspond with her picture on her card. As a result, she persistently had problems with the bank, immigration authorities when she travelled abroad, and the police. Her new physical identity and appearance also caused great discomfort amongst the students and her colleagues at the college where she was teaching. Since her surgery, men, both friends and strangers have come up to her and asked to touch her breasts. She understands their curiosity but she also understands that this is sexual harassment. For Jaime, the worst form of violation was being denied her true identity and being ostracised by society for simply existing.

In general, transwomen said that they avoid going to the police or seeking legal remedy even when they are experiencing violence for fear of being ridiculed and further harassed by the authorities. Professor Dr Teh Yik Koon, in her research *The Mak Nyahs: Malaysian Male to Female Transsexuals*, found that 71 per cent of 507 interviewees had been forced to strip in front of others by state officials, 47 per cent had been humiliated in front of others, 9 per cent had been beaten up in custody by the police, and some were even invited to have sex with the police officers.⁵⁴ Although Professor Dr Teh's research was conducted in 2001, violence by State actors, namely the police and Islamic religious officers persists to this day. Violence sometimes escalates when over-zealous officers are involved or if officers retaliate when police reports or legal action is taken against them for their abuse of power.

Mimi, a 35-year-old transwoman, who filed a police complaint for sexual harassment, recounted police officers in Penang trivializing and dismissing her case without conducting an investigation.

Five years ago ... when I lodged a report with this inspector, I said, 'this boy ... molested me' ... I think, that policeman, was a family friend [of the perpetrators]. They [police] tried to help them [perpetrators] ... They said to me, '*Aiyoh*, you are man. Man and man, no problem' ... my answer was better. 'Why do you arrest Anwar Ibrahim?'⁵⁵ Just leave it like that *la*. Man and man, who cares? Why you arrest him?' The inspector kept quiet.⁵⁶

Jess, a 20-year-old transwoman, was arrested at a food stall for wearing women's attire and "posing as a woman," which is a criminal offence under Malaysia's syariah (sharia/Islamic law).⁵⁷ She recounted:

When I was arrested that night, it was around one something, at night ... they had a raid. I just finished a show. I was in my heavy make-up, [and] we decided to go have something to eat, and at that area, there were some mak nyah who were selling their bodies. They came and arrested one mak nyah ... standing like 200 meters away from me, not that far from me ... There were three of us, me and two friends of mine, also ladyboys. They came over and asked for our identification cards. I was eating. 'Give me your identification card?' there were a lot of people around so I didn't want people to come and be nosy. I gave my identification card. 'Come, follow him, get into the van.' ... All three of us followed them, and then we realised that we have been arrested. After that, they straightaway made a call, 'Sir, we have 2 *pondans* here, Malay. The other one is Indian. What shall we do with the rest? Tomorrow we bring them to the Religious Department' ... After that, they placed me in a lock-up. They investigated and everything, and [for] evidence, [they took] my eyelashes, my bra; they have yet to return them.⁵⁸

Jess explained that her arrest caused tension with her parents who doubted her story of being arbitrarily arrested. Her parents, like most people assumed that typically only sex workers are arrested under this law, and therefore assumed that Jess was engaging in criminal, stigmatised activity. Jess suffered mild depression as a result of the arrest and the conflict it caused in her family.

Ann, who is Indian (an ethnic minority community in Malaysia) transwoman had been arrested 36 times and sentenced to eight months in prison. She served only two weeks because her mother bailed her out of prison for 800 Malaysian ringgit (USD \$267). Ann said she had been abused and humiliated in prison by the wardens. She emphasised that she does not consume illegal drugs, is not a sex worker, and

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

55 In 1998, then Deputy Prime Minister Anwar Ibrahim was dismissed and charged for corruption and sodomy.

56 Mimi, interview with research team member, March 2011.

57 Jess, interview with research team member, March 2011.

58 Ibid.

therefore had not broken any laws. She is, however homeless and drives a trishaw (three-wheeled pedalled taxi) for a living, placing her at the bottom of the social hierarchy. Since she is Indian, Ann cannot be subjected to the “posing as woman” syariah law in her state, so the police charged her under Section 21 of the Minor Offences Act for public indecency and for alleged drug use. They referred to her low body weight as “evidence” of illegal drug use. Ann’s arresting officers had sexually harassed her.⁵⁹ She recounted:

They sentenced me to prison for eight months. In prison they bullied me a lot. The prison officers told me, ‘We will put [you] in the cells with boys.’ They abused me a lot in prison ... they would ask us to run to a Saroja Devi (Indian female movie star) song. They would play some old songs and make us run from a distance to the flagpole make the boys laugh at us. They would take the flag and wrap it around us ... they would twist our hands ... make us sit in the sun. ... The warden would insult us ... would ask us, ‘How about if I come to your cell? There are only two of you there. Can I do you?’ They would talk to us in a very vulgar manner ... Once I got out, the police in court asked me, ‘Where are you going to go once you are released, where are you going to sleep? Do you want me to come along to keep you company?’ ... I was asked by a police officer, the officer who handcuffs you and brings you to court, he was an Indian man ... about 45 years old. He asked me, ‘Should I come along?’⁶⁰

Violence in Schools

All government schools in Malaysia enforce and promote gender stereotypes and conformity. For instance, Malay and Muslim girls are encouraged to wear the hijab in schools; some schools even

make it mandatory, using the rationale that wearing the hijab would “protect their modesty.” In government schools, girls are not allowed to have very short hair and boys are not allowed to have long hair; the definition for “short” and “long” is arbitrarily decided by the school administration. Schools also have gender specific uniforms. Transgender persons we interviewed said that they felt “very uneasy in the school uniforms and having to behave a certain way.” They said they could not focus on their studies.

Lam Cheong, a 51-year-old transman, recalled his difficulties while he was a student, in relating to his peers in school and being forced to conform to societal gender norms. His story was not that different from the difficulties trans students experience today. Lam Cheong recalled:

Obviously I was in a girl school. I basically could not really relate to my classmates because I knew that I was like very different because they started talking about girlish (teenage) things ... I just didn’t fit in. ... I was born woman but I certainly did not feel comfortable wearing a skirt or a dress. Because of that, I basically did not want to improve myself in school ... in my young mind, I always thought that if I were to come out to work, I would have to live a life as a woman, dress in women’s clothes to go to work.⁶¹

In addition to dress codes, gender specific facilities such as student accommodations (in residential schools), often create problems for transgender persons. Two educators interviewed for this research shared their experiences of students who confided in them regarding these problems.⁶² The educators said that effeminate or transgender students often are moved to rooms that are nearer to the wardens’ rooms so that the wardens can keep an eye on their conduct and police them. Student accommodation away from campus is often expensive, and finding

59 Ann, interview with research team member, November 2010.

60 Ibid.

61 Lam Cheong, interview with research team member, June 2011.

62 Habiba, interview with research team member, June 2010.
Jasmine, interview with research team member, May 2011.

lodging on a house-sharing basis can be hard for anyone. However, it is often more challenging for transgender persons since this hinges on the level of acceptance by friends at the school or members from their own (ethnic or income) backgrounds and how they feel about sharing a house with a transgender person.

The present policy of the Education Department of the Federal Territory (Kuala Lumpur) categorises homosexuality and “gender confusion” as a serious offence, with recommended penalties such as: stern warning, whipping/caning, fine, suspension, expulsion, or being charged in court.⁶³ This policy is published in a student handbook, produced and distributed by the Education Department. It sets the environment in schools on how LBT students are to be treated by school authorities, teachers and students.

Fourteen interviewees recalled their experiences in school during the 1980s and 1990s, showing that violence towards LBT persons in educational institutions, such as verbal humiliation, sexual abuse, and school expulsion for non-conforming sexual orientation or gender expression, has remained relatively constant over the years.

Jess, a twenty-year-old transwoman, recalled boys in her school attempting to force her to give them oral sex in the school toilet after physical education. When she refused, the boys threatened to beat her up. Jess stood her ground, which scared them. The matter reached the school counsellor and disciplinary teacher, but Jess did not name the perpetrators.⁶⁴

Nova, a 29-year-old Chinese lesbian, recalled being expelled from her secondary school when she was sixteen, after her girlfriend’s parents “outed” her to the teachers in school. Nova’s girlfriend’s parents were not pleased that their daughter was dating a girl.⁶⁵

63 “Malaysian NGO Alternative Report assessing the Government’s progress in implementing CEDAW,” Women’s Aid Organization (2012), 206, <http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf>.

64 Jess, interview with research team member, March 2011.

65 Nova, interview with research team member, January 2011.

Aminah, a 30-year-old Malay transwoman, recalled her life as a student in an all-boys boarding school, where sexual relations between boys was seen as part of an initiation process. Even so, Aminah’s seniors in school beat her up when they discovered her attraction towards a male school-mate. Aminah recounted:

I was beaten up by a group of seniors when I was 13, for saying that one of the seniors was hot ... So I told him [my friend] that like, ‘I totally like that senior’ because I thought he’s hot, somehow word got around, and got to that senior and he felt offended or something, and said that they had to do something about me. So, he rounded up some of his seniors and confronted me. And made me confess that I had said something like that and then they beat me up, for saying that I like a boy.⁶⁶

Violence by Medical and Mental Health Professionals

Nearly 30 interviewees for this research said they generally avoided seeking health care unless they had a trusted doctor. Several of our interviewees stated that mental health professionals, doctors and gynaecologists are ill-equipped to deal with their specific needs, lack sensitivity, and do not have accurate and updated information to treat LBT persons. Two transwomen reported being stared at and verbally insulted by nurses and attendants during a routine health check-up at a hospital.

Gia is a post-operative transwoman who completed her sex reassignment surgery (SRS) in early 2000 in Thailand. In order to change her name on her identification card to match her reassigned gender, Gia was required to provide a letter from a gynaecologist working at a government hospital that confirmed the requisite surgeries.

66 Aminah, interview with research team member, January 2011.

Nova is a 28-year-old Chinese Malaysian woman, who realised that she was attracted to women at an early age. “Ever since I was young, I’ve asked myself all those questions, even from a young age, 5 or 6, ... even when I watch T.V ... I’ve always found myself very attracted to the lady [in a program]. I’m never attracted to the men.” Nova had her first real crush on a girl when she was twelve years old.

Nova did not want to go to the private all-girls high school that her parents had chosen because of rumours that it was a “lesbian school.” However, she quickly felt at home because she found other girls like her and befriended them. As a student, she was a high achiever.

When she was sixteen, Nova’s romantic partner of two years, Linda, found out about Rachel, who Nova was secretly dating at the same time. Linda told the school authorities that Nova was a lesbian, and the whole school learned not only of Nova’s relationship with Rachel but also her relationship with Linda. Nova was suspended from the boarding school sleeping quarters where she was living at the time, and the teacher told her, “You have a disease. I do not want you to stay in the hostel because you will spread this disease to other people.”

Nova did her best to persuade the school headmistress to allow her to stay in school. Her parents tried to do the same. Nova was instructed by the headmistress to see a psychiatrist and “if the psychiatrist gives a report that says that you are okay, then I’ll allow you to stay in school.” Nova did not want to leave school so she went to a psychiatrist. When the new school year began, Nova could not find her name on the class list. The psychiatrist’s report had not been sent. Nova begged to be allowed to finish school and complete her final examination year but the headmistress refused.

“Later ... I went to the University Hospital and asked them if they [had sent] the report [to my school, and only then did they send] the report but it was too late already [and I remained suspended]. ... [T]hat really shattered me completely Because I loved my school so much That’s what I told [the head mistress].... [B]ut she just said... they are trying to weed out lesbianism because apparently [the school] has a bad reputation.”

After Nova was expelled, the discipline teacher⁶⁷ interviewed Nova’s “first ever girlfriend” with whom she was involved when she was about thirteen years old. “Whoever I was supposed to have [had] a relationship with, the teacher interviewed ... So I think, I was used as a scapegoat, to expel me, to send out a message to all my friends who are gay or [others who] are gay in that school. If you want to be gay, you want to be out and proud, this is what you will get.”

“The thought of me leaving that school made me scared more than anything. So I did not go to the psychiatrist because I wanted to be healed. No. I know that I am gay and even though the headmistress did say that you have to go to the psychiatrist to say that you are not gay and to make sure that you are not gay. But I knew it was an excuse.” Nova added, “I think [the school was] fighting very hard against [the bad reputation] They became very strict on everyone, especially my group of friends. ... I think that it was my own mistake because I did things the way I wanted to, I was never shy, I never [hid] who I was and maybe that cost me, but I also feel that [the] education system does not...have the right to tell me whether I can be in school or not *lah*. I still believe that *lah*.”

67 A discipline teacher is in charge of enforcing student discipline.

The first doctor she met in the Kuala Lumpur General Hospital was a Malay doctor who refused to certify her document because he believed the hospital and the Malaysian government do not recognise sex reassignment surgery, that it was not within his mandate to certify that Gia had undergone sex reassignment surgeries. Gia felt that the doctor refused to help her because he might have considered it sinful (according to his Muslim beliefs).

Gia said she was lucky to find another doctor who was Chinese (non-Muslim), who agreed to certify that she had undergone SRS. Gia was then able to get her name changed on her national identification card by the National Registration Department. However they would only change Gia's name and not also the gender marker. Her gender remains "male" on her identification card.⁶⁸

PUBLIC VIOLENCE

Violence on the Streets

Twenty-six out of the 45 LBT persons we interviewed had experienced verbal violence by strangers in public places. The perpetrators tended to be from the same ethnic backgrounds as the respondents, usually using their mother tongue (primary or first languages) to make disparaging comments, do name-calling and cat-calling – sometimes accompanied by lewd gestures. Many interviewees said that the content of the verbal violence suggested that the perpetrators' needed to maintain ownership over women that belonged to their ethnic group. Sexually demeaning words such as *pondan*, *bapok*, *ombote*, dyke, goddamn lesbian, tomboy and pengkid were used, as well as howling sounds like "au"⁶⁹ and religious condemnation. In some cases, the verbal insults escalated into physical violence, including throwing fruit peels or even bags of urine or faeces⁷⁰ at the interviewees. Verbal attacks against gender-variant women –

butch lesbians, pengkid and their female partners – included: "Do you want to be fingered?" "It is not like you have a penis! You cannot feel anything without a penis," "Do you need a man?" "Are there no other men in this world?" "You can never satisfy her the way that I can," "If any one of you, if you take off your pants and you have a penis, I will chop mine off."

These verbal attacks are likely linked to a perceived challenge to the perpetrators' masculinity when gender-variant people adopt "masculine roles." Relationships between two women or between a gender-variant person and a woman are seen as an affront to the dominant patriarchal and heterosexist culture in Malaysia. These verbal attacks also indicate anger and disappointment by men towards transwomen, and in these cases, possibly perceiving transwomen as intentionally acting to embarrass and shame them as men from a particular ethnicity or religion. Some transwomen have been told by men to "Stop pretending" or "You are a man, but you want to be a *pondan*."

In some cases, complete strangers confronted lesbian and pengkid interviewees who were with their partners, demanded to know if they were lovers or the nature of their relationship, or warned the couples that they were behaving shamefully.

Emilia, a Chinese lesbian was stopped by a group of Indian men when she was walking with her Indian girlfriend. The men approached Emilia and her girlfriend, and asked the girlfriend in Tamil if she was a lesbian. The couple quickly walked away.⁷¹

In the 1990s, Padang Kota in Penang and Dataran Merdeka in Kuala Lumpur were two places where transwomen hung out, which later turned into places for the general public to come and *lepas geram* (let out their anger, express ultra violence) towards transwomen.

Regina, a transwoman from Penang, talked

68 Gia, interview with research team member, February 2011.

69 "Au" is a sound made by people to imply that one is "sissy."

70 Anecdotal information from casual conversations with transwomen sex workers from mainland Penang in December 2010.

71 Emilia, interview with research team member, January 2011.

about her transwomen friends being surrounded by a group of men, demanding sexual services.⁷² Samera, a transwoman from Kuala Lumpur, recalled her transwomen friends being beaten up, pulled into strangers' cars, and forced to have sex with unknown men in the perpetrators' cars. Samera herself had stones thrown at her and her friends by strangers in passing cars.⁷³

Cyber Bullying

Communication and social interactions in Malaysia have changed since the 1990s with the introduction of the Internet. The Internet has brought new tools and avenues for activism, especially on issues such as LGBT rights. On the other hand, the Internet has also become a space for violence and public bullying, which can be directed anonymously. Katrina, a lesbian in her thirties, who was part of the campaign in support of Fatine Young,⁷⁴ was called "pig" and told she was "fat and ugly and that's why guys do not want to have sex with you." The attackers questioned her sexual orientation. She received death and rape threats by online users she did not know. Some of the online attackers said they wished that God would punish Katrina and that she would die a horrible death.⁷⁵

Mei Mei, a 27-year-old lesbian, explained that she experienced Internet bullying when an anonymous online chatter, to whom she revealed her sexual orientation, made disparaging remarks: "You women need guys to straighten you all up ... if you don't date a guy, if you don't have sex with a guy, you are not a complete woman."⁷⁶

72 Regina, interview with research team member, June 2011.

73 Samera, interview with research team member, May 2011.

74 In 2010, Fatine Young, a transwoman from Malaysia facing deportation from the United Kingdom, fought to remain in the UK with her partner. A group of lesbians, gays, bisexuals, queer and transgender persons started a local campaign on Facebook to mobilise support for Fatine.

75 Katrina, interview with research team member, January 2011.

76 Mei Mei, interview with research team member, March 2011.

Negative Influence of Religion

The politicization of homosexuality and transgenderism and the use of religion to propagate gender stereotypes in Malaysia have influenced not only the way LBT people view themselves but also the perceptions others have about the LBT community.

Twelve interviewees explained that family members, friends and strangers used religious arguments against them or insisted that homosexuality is abnormal. Four out of these twelve interviewees are Christians.

Emilia, a lesbian, is a Buddhist, and some of her siblings converted to Christianity when they grew older. When Emilia's family members discovered her sexual orientation, one of her Christian brothers frequently told her that homosexuality is a sin, and gave her Bibles to read. Her brother also gathered his friends and together they preached to Emilia about the wrongs of homosexuality.⁷⁷

Stacy, a bisexual Malay woman in her early twenties, discovered her bisexuality when she was about 15 years old after having a crush on a girl in school. Although nothing sexual happened between the two, her friends in school felt obligated to "bring her to the right path." When their "interventions to save her" failed, Stacy's friends isolated her. As Stacy recounted:

We met in May 2000 ... we were talking on the phone everyday. My friends from my school knew about it because when they attend events, they could see it, right. And then they started asking, 'What's going on? Are you going out with this girl? Are you dating this girl? What's going on?' ... 'Like, you do know that it is wrong, right? It is against the religion.' And these were not just Muslim people telling me, because I have a fair bit of friends of different religions and races and beliefs, and they all said the same thing. 'Stacy, it is wrong.'

77 Emilia, interview with research team member, January 2011.

What the hell is wrong with you?⁷⁸

Regina, a Malay transwoman in her forties, was publicly harassed by a group of Malay men during an event she hosted. The men in the audience shouted, “The prophet does not acknowledge you as his follower.”⁷⁹

Naim, a Malay transman in his early forties, said a group of boys shouted, “Pengkids are sinful” to him at a night market.⁸⁰

The research shows several, mostly negative references to pengkid in Malay comic books, literature, movies and newspapers. The research also shows the existence of pengkid support networks made up exclusively of pengkids on social networking sites such as MySpace and Facebook.

PRIVATE VIOLENCE

Violence by Family and Friends

The LBT people interviewed for this research told us that they faced violence: when they disclosed their non-conforming sexual orientation or gender identity; or when their sexual orientation or gender identity was accidentally discovered or publicised without their permission.

Thirteen LBT interviewees suffered physical violence from their family members. The physical violence was an escalation from the emotional violence they had experienced.

Malay transwomen reported physical violence and verbal violence for being effeminate, including repeatedly being told to be more masculine by family members and friends. Interviewees who exhibited gender non-conformity as children often suffered violence by family members from a very young age.

The restrictions on gender and sexual expressions,

largely imposed by family members and friends, took several forms, including being discouraged and forbidden to continue their intimate relationships, restricted from dressing in what felt most comfortable, and restricted from showing affection to their partners. Some of these restrictions were also self-imposed, as the interviewees reported that they did not want to “humiliate” their family members by being themselves. Many transwomen interviewees, who have transitioned (from male to female) said that they dress modestly or wear unisex clothes when they visit their parents.

My brother would also hit me because I walked like a girl and didn't do boy things. Even my mother used to hit me with a broom. I couldn't stand the abuse from my family members and so I ran away from home.

Three lesbians reported that their parents used verbal pressure to force them to meet mental health professionals or religious leaders (specifically a known ex-gay pastor) so that they could be “corrected.”

Fatima’s mother sent her to a psychiatrist, who is a family friend, after discovering Fatima’s sexual orientation. “My mum did that. They sent me to the psychiatrist. And the doctor is actually her friend ... Nothing changed. Nothing will change. I am not crazy, so why send me there when the place is for people with mental problems?” Fatima reported.⁸¹

Jason, a 22-year-old transman, said that when his sister found out about his gender identity, she found him a mental health counsellor.⁸²

All the mental health professionals or religious leaders who were suggested to the interviewees by family members were friends of the family or someone that their parents knew. This suggests that parents and family members of the interviewees place great importance on keeping their children’s sexual orientation and gender identity a

78 Stacy, interview with research team member, April 2011.

79 Regina, interview with research team member, June 2011.

80 Naim, interview with research team member, February 2011.

81 Fatima, interview with research team member, April 2011.

82 Jason, interview with research team member, October 2011.

secret, and that the end goal is the “correction” of their children’s sexual orientation and/or gender identity. To an extent, these are actions persuaded by the State’s official stance towards LBT persons. The research also shows that parents and family members of gender non-conforming persons are sometimes also targeted and socially pressured to conform, particularly when the non-conforming gender expression is very visible. The parents are made to feel like bad parents for not nurturing their children into becoming “model citizens,” i.e., gender conforming, heterosexual, married and religious. Parents are pressured by extended family members, friends, and neighbours to change their transgender children. Shirley, a trans-woman shared her family’s story:

My father is like quite famous in that area, kampong [village], so a lot of people, kampong [village] people also talked about me, like, ‘Why are you so soft?’... so a lot of people give more pressure to my parents when they hear all these [questions], like, ‘Why is your son very soft?’⁸³

MOST COMMON TYPES OF VIOLENCE AGAINST LBT PEOPLE

Emotional Violence

Almost all 45 interviewees reported that they had experienced multiple incidents of emotional violence in their lifetimes, primarily from family members and people in their immediate circle. This violence included: being told to revert to their assigned gender or to behave in accordance with socially and culturally prescribed gender-conforming roles and expression; name-calling; being subjected to personally demeaning comments; people around them exhibiting discomfort because of their sexual orientation, gender identity and/or gender expres-

sion; being forced to meet with a religious authority or a mental health professional; being stared at;⁸⁴ subjected to silent treatment or isolation; deprived of financial support; and being told that homosexuality is abnormal or a sin according to the religion.

Interviewees reported that immediate and extended family members would express and verbalise their discomfort with the way they dress, walk and behave with comments such as, “Dress like a normal person, have short hair, dress like male,” “Why are you dressed like a woman? Why do you waste your money on these illogical things [made for women]?” “Why are you like this? Don’t you know you are a boy?” “Our family, we don’t do this kind of things so please stop all your nonsense and then just start seeing guys.”

One lesbian interviewee mentioned that her mother monitored her activities by recording her telephone conversations and following her when she left home.

Eight interviewees reported that comments or interrogations about their sexual orientation or gender identity were sometimes followed by questions regarding marriage, asked in public settings such as family gatherings. Bear, a lesbian, said her immediate family and relatives constantly pressured her to marry a man:

I know I am with a woman, my family members know that I am dating a woman. Sometimes my sister would ask me, ‘How long are you going to be like this? It is not like you are not pretty. A lot of men want you. When are you going to get married? You are already 22 years old. Don’t be like this,’ they would say. ‘Why don’t you want to find a guy?’⁸⁵

Like most cultures, procreation and heterosexual marriage is valued in Malaysia.⁸⁶ Being lesbian or

83 Shirley, interview with research team member, January 2011.

84 Ten out the 45 interviewees, all of them gender non-conforming, reported being stared at in public spaces.

85 Bear, interview with research team member, April 2011.

86 Christina Tan, “Women are delaying marriage and having fewer

transgender is sometimes treated as bad luck for other members of the family. Ann, a transwoman, reported that her family members are afraid that her gender identity will ruin her siblings' chances of marriage. The bad luck of having a transgender child was attributed to some wrongdoing by the mother, father or both parents.⁸⁷

Hostility by family members discouraged the interviewees from coming out to their families, especially to selected family members. Two lesbians, who have come out to most of their family members, have yet to tell their fathers about their sexual orientation because of their fathers' perception and attitudes towards LGBT persons.

Two other lesbian interviewees explained that their inability to come out to selected family members, or keeping a single-family member in the dark about their sexual orientation, created dilemmas and anxiety for them. Both interviewees felt that the negative comments made by their family members about LGBT persons in general were in reality directed at them. One of them is Emilia, who said:

... we [my father and I] had discussion about gay people, especially during the American Idols, Adam Lambert winning the title and all. [My father] actually said ... that, 'every parent hopes for their children to be normal. If one of the children is gay, lesbian they need to be treated as a disabled person....' When I heard that, I did try to tell him a little bit of, no, you should not treat it as a disabled child; he's not disabled, he can work, he can be brilliant and all but, just that they choose to love differently but he should not be treated as a disabled person. ... So from then onwards, I thought that I better not let him know that I am one, his disabled child."⁸⁸

children," *The Star Online*, July 12, 2010, <http://www.thestar.com.my>.

87 Ann, interview with research team member, November 2010.

88 Emilia, interview with research team member, January 2011.

Physical Violence

Nine interviewees told us that they suffered physical violence, such as being beaten up and confined or imprisoned by their family members. Seven of them were transgender persons – six transwomen and a transman. The violence was triggered by one or several of a set of factors: seeing the interviewees in female attire; discovery of personal belongings such as erotic videos in their personal spaces; expressed dislike of the interviewees' reassigned gender; upon discovering the interviewees' sexual orientation; catching them in the act (having sexual relations) at "cruising" areas; or discovering that the interviewees are sex workers. Violence, including expression of discomfort and desire to "correct" the interviewees, was most often perpetrated by the dominant male figure in the family. In some of the cases, the perpetrators belonged to the State's uniformed units.

Florence, a 35-year-old Malay transwoman, informed us that her brother, an army commander, physically violated her when she was a teenager transitioning as a transwoman, both in public and private spaces. As Florence explained:

My brother used to hit me in the beginning. My brother took my dad's handcuffs. He hit me and then he handcuffed me. Shaved my head and handcuffed me to an electric pole in Padang Kota (a famous place in Penang where the transwomen and sex workers used to hang out). He kicked my friends.⁸⁹

Ann, an Indian transwoman who is twenty years old, shared that her family members, especially her father, had physically violated her since she was an infant because, even as a baby, she looked like a girl. He also instructed other members of her family to treat her poorly. As a child, Ann exhibited feminine tendencies and took comfort in undertaking stereotypical women roles, which did not please the men in her family. Ann recounted her horrific experiences:

89 Florence, interview with research team member, February 2011.

[I was abused] daily. I injured my head in several places. He [my father] would hit me, burn me, and injure my head. When he hits me, he would not hit me using his hands; he would use wires, metal rods to hit me. He has even broken my arms. I was staying with him until I was seven years old. I can tell you that I suffered a lot. When I was born, he would tell [my family] not to feed me milk. He used to abuse me in so many ways ... [My uncle] was no different too. He didn't like the way I walked, my style, he said, 'Your face is like a girl's face,' 'Why do you dress that way?' 'Why do you walk like that?' Using that as reasons, he would hit me and then spread chili paste all over the bruises. He would spread chili paste on open wounds. I couldn't stand his abusive behaviour so ... I left his house to live with my mother. However, my brother didn't like me living with my mother at all. They didn't like the way I walked, talked, etc. I lived with my mother until I was fifteen years old. They used to start rumours about me, and my brother would also hit me because I walked like a girl and didn't do boy things. Even my mother used to hit me with a broom. I couldn't stand the abuse from my family members and so I ran away from home.⁹⁰

In some instances, guilt, shame and anxiety experienced by family members or others in the interviewees' lives resulted in physical and other forms of violence towards the interviewees. Transwomen who were sex workers were even more vulnerable to violence due to the negative perceptions of sex workers and the taboo surrounding sex work. Florence, a transwoman, faced violence by her brother upon discovering her gender identity and occupation as a sex worker, even though her brother himself engaged transwomen sex workers. According to Florence:

He loves going to the *pondan*. I know. So

if he can help it, he doesn't want his sibling to be a sex worker. I was in Malacca [a southern state in Malaysia] doing sex work; I knew he was there ... All my friends knew him. I showed them his photo [and asked] 'Do you know this man, *nyah?*' [and they asked me], 'Who is this, *nyah?*' '*Nyah*, it is my brother.' [And they told me], 'You wait. At two am he will come by to use *pondan*. He will go to that *pondan*'s house.' I watched. It was so surreal. Since then, I stopped holding back. [I told my brother], 'When I was younger you didn't want me to be a *pondan* but you yourself like to have sex with *pondan*. You are a scumbag.' Since then, he doesn't dare to do anything to me. Doesn't even dare to touch me. ... After that he said, he admitted it himself, 'If I can help it, I don't want my own sibling to do that sort of job. If you want to be a woman, be a woman but find a decent job.'⁹¹

Florence has tried to get out of sex work. She has looked for work at several places, but they have all rejected her because of her gender identity.

Ima, a 30-year-old transwoman from Penang, told us that her father beat her up and imprisoned her in the house because he did not like her interacting with neighbours and friends. She said:

My dad has hit me before. I can't accept him, like I said earlier, I won't be able to accept him even in the afterlife, and he is my biological father. I cannot accept him for what he has done to me. When someone makes a mistake... he doesn't investigate, he just hits... I ran away to my mother's place.... but my dad imprisoned me. Like, he didn't allow me to interact with other people, like he would make me stay at home. I felt disappointed. Why do you have to imprison me in the house? Because I am effeminate like this? But why can't I interact with people? Others can interact with each other. That's how

90 Ann, interview with research team member, November 2010.

91 Florence, interview with research team member, February 2011.

I felt.... I don't even have the time to interact with my own siblings.⁹²

Other than physical violence from family members, three transwomen reported physical violence from schoolmates, employers and strangers. Ann, a twenty-year-old Indian transwoman, noted that when she was younger, her employers had beaten her up, slapped her, and thrown hot water at her because of her gender expression. Ann comes from a very low-income household and started working when she was seven years old.⁹³

Sexual Violence

Thirteen transgender interviewees had been sexually abused by both known and unknown perpetrators, such as family members, intimate partners, strangers, friends, acquaintances, and State actors (i.e., police officers). The sexual violence they experienced included: lewd gestures; touching of the interviewee's breasts/chest; being forced to stroke the perpetrator's genitals; and being forced to re-enact sexual activities to the perpetrator. The transwomen interviewees reported sexual objectification, as they were presumed to be sex workers or to enjoy providing sexual favours to any man who wanted sex.

Several transwomen interviewees noted that they had been held hostage for sexual favours, a common occurrence in Malaysia. Aminah, a 30-year-old transwoman who works as an executive in Kuala Lumpur, was pressured by a taxi driver to give him oral sex in his taxi. She recounted:

I was coming back from work, a little bit after midnight, from Bukit Bintang. So I hailed a taxi ... I said, 'Please take me back to my place.' ... He turned around and looked at me and said, 'Oh, uh, can you sit in front please?' And I naively said yes, for some reason ... he said, 'Could

you please go down on me?' Yeah, he asked me to give him a blowjob, and I said, 'No, I'm not interested, please don't ask me to do this and you know, please take me back to my place or just, you know, I'll pay you whatever you need, just stop me off.' He said, 'No, I don't need your money; I need you to give me a blowjob,' that's what he said insistently. And he took my hand and he put my hand on his crotch and asked me to stroke his penis, and obviously he was driving and he forced me to put my hands back on his penis. So, he had one hand on the steering wheel and the other hand on my hand pushing on his penis, all this while he was driving. And I resisted, and he stopped for a while but then he pulled over at one point at a really dark place, and he asked me to go down on him again, and I said no. The doors were all locked, so I couldn't go out, it was really dark, it was about twelve or one [am] that time ... I cried, I pleaded, I begged of him, please take me back home, it's late at night, I don't do this, please don't force me into doing this, and I don't, because I just don't do this, period. ... The thing that hurt me the most was that he said, 'you are the first transgender I encountered that is like you. All the other *mak nyahs* that I have encountered would just go down on me.' And then he said, 'Oh, I thought all of you like this. And I assumed by all of you he meant transgender people enjoy giving blow jobs to men. I said, No, I don't enjoy giving blow jobs to strangers, yeah, that's what I told him. And then when I started crying, I think I started to panic and he said, 'Okay, okay, I'll send you home.'⁹⁴

Even friends and acquaintances are sexually abusive. Shirley, a 34-year-old transwoman, was "jokingly" asked by an acquaintance to provide blowjobs to unknown men publicly. The incident had occurred twice, and the same acquaintance once grabbed her buttocks in a public place. Shirley

92 Ima, interview with research team member, February 2011.

93 Ann, interview with research team member, November 2010.

94 Aminah, interview with research team member, January 2011.

explained that she was shocked and that she did not know how to react in those situations, as she had never been subjected to such harassment prior to that incident. As a result, she is cautious and worried to come out as a transwoman, as she anticipates similar incidents occurring in the future.⁹⁵

The prevalence of sexual violence towards transwomen, especially transwomen who are also sex workers, has normalised sexual violence for some. Normalizing violence makes sense given the criminalization, stigmatization and lack of protection of the human rights of transwomen (and lesbians, bisexuals and queer women), all of which reduced their self-worth, and left them feeling helpless in violent situations.

Mas, a transwoman sex worker from Perak in her thirties, described being raped as the “worst experience in life.” She said that her transwomen friends just laughed it off. She felt their reactions were probably because they were used to such violence. Mas shared that after the rape, she bled and she cried because she could not bear the pain. She internalised the violence for many years, even justifying the rape by telling herself that it was just her bad luck and she had to accept what happened because “that is what you get for being a girl when god made you a boy.”⁹⁶

Sexual violence directed at LBT people often comes from a morbid curiosity with their sex lives, and the notion that sex between two women is erotic.

Yuli, a 27-year-old lesbian was caught making out with her then-lover by a security guard. He threatened to report them to the authorities and asked them if their parents were aware of their relationship. Yuli begged him to let them go. He told them he would allow them to go on condition that they kiss in front of him. They did as they were told and the security guard watched.⁹⁷

A transman, Fred, who is in his twenties, and a

pengkid, reported that men and women molested them and touched them “in the chest area” to satisfy their “curiosity” about gender. Fred confronted those who touched him, and they admitted that their intentions of doing it were to confirm Fred’s gender.⁹⁸

Some perpetrators use sexual violence as a corrective tool to “change back” the sexual orientation and gender identity of LBT people. Bear, a 27-year-old lesbian and former pengkid was threatened with rape over the telephone by some of her male acquaintances when she was in university.⁹⁹

Intimate Partner Violence

Like heterosexual relationships, the relationships of LBT persons are not devoid of intimate partner violence. Malaysia’s Domestic Violence Act, which was enacted in 1994 and amended in 2011, does not cover same sex partner violence and violence in unmarried partnerships. The Domestic Violence Act is limited to those in a familial relationship and those who marry the opposite sex.¹⁰⁰

Seven interviewees disclosed that they had experienced intimate partner violence, suffering from physical and emotional violence caused mostly by their partners’ jealousy, partners’ insecurities about their sexual orientation and/or gender identity, and transference of violence by partners following stigma and discrimination that partners had faced.

Katrina, a lesbian in her early thirties, was physically and emotionally abused by her former partner of more than five years. Katrina was forced to hide her sexual orientation, restricted from socializing with other people, restricted from dressing the way she liked, and was monitored

95 Shirley, interview with research team member, January 2011.

96 Mas, interview with research team member, March 2011.

97 Yuli, interview with research team member, April 2011.

98 Fred, interview with research team member, April 2011.

99 Bear, interview with research team member, April 2011.

100 “Malaysian NGO Alternative Report assessing the Government’s progress in implementing CEDAW,” Women’s Aid Organization (2012), 206, <http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf>.

and financially controlled. This abuse was partly a projection of the violence and mistreatment that her partner had experienced by her own family members. Katrina's partner's parents were in denial about their daughter's sexual orientation. They frequently pressured Katrina's partner to marry. Katrina's partner's mother even told her daughter that she would be happy to give a dowry to any guy who would marry her. Katrina believed that the pressure from family members, especially the mother, might have made her partner violent. The abuse made Katrina depressed, a condition that continued three years after the relationship ended. She expressed fear that she might treat any future partners the same way that her ex-girlfriend had treated her.¹⁰¹

Generally, LBT persons fear reporting abuse, since they do not want their identity exposed and want to avoid further ridicule or harassment by the authorities. No laws are in place that explicitly protect them and their human rights.

Wilma is a lesbian who was in an on-and-off abusive relationship for ten years. She knew that her girlfriend was abusive in another relationship but Wilma thought her partner would be different in the relationship with her. However, things did not change. Wilma recalled friends intervening but she did not want to leave the relationship. After a period of time, she said she could not feel the beatings anymore. She went into a self-deprecating mode, where she blamed herself for the beatings. She finally decided to leave the relationship.¹⁰² Wilma recalled:

I thought about it [lodging a police report] but I never went through [with] it, because of the complication that would arise. And if the police start to ask questions, I was just wasn't ready to answer, 'Why is this girl beating you up?' [laughs] 'Because she's my' So, no, I didn't. ... You'd risk having to come out in the papers, this is a sensational

story here, I mean two women, one gets beaten and within half an inch of her life, and suddenly the media gets a hold of it, then you'll get really heady headlines 'lesbian goes to court' or something [laughs]. You just don't want that.¹⁰³

Keith, a transman in his twenties, recollected his partner's violence, which resulted in weight loss, drug and alcohol use to cope with the violence. He also recalled lying about the bruises to his friends and preventing them from intervening. Although he has left the relationship, Keith said that he gets nightmares about his violent girlfriend and the abuse he experienced. In the nightmares, he always dies. Lodging a police report did not even cross Keith's mind.¹⁰⁴

DISCRIMINATION

LBT persons we interviewed experienced discrimination as part of the violence to which they were subjected. Discrimination often prevented transwomen who did sex work from seeking other employment when the sex work subjected them to violence on the street. Without a secondary education¹⁰⁵ and faced constantly with job discrimination, many transwomen turn to sex work in order to survive.¹⁰⁶ As a result, they later become trapped in the vicious cycle of oppression and poverty.

Fear of discrimination was a key reason for maintaining secrecy about gender identity and/or sexual orientation – to “go stealth” and use “invisibility” as a way to keep jobs and/or earn decent incomes in mainstream jobs.

103 Ibid.

104 Keith, interview with researcher, February 2011.

105 The Malaysian education system is comprised of two state-funded levels: primary level with 6 standards (age 7 to 12 years old) and secondary level with 5 forms (age 13 to 17).

106 Based on anecdotal information from staff at the PT Foundation, it is known that lesbians have also resorted to sex work. These lesbians come from poorer classes of society.

101 Katrina, interview with researcher, January 2011.

102 Wilma, interview with researcher, April 2011.

Ima, a 32-year-old Malay and Muslim *Mak Nyah* (transwoman) went to school until the age of fifteen, when she decided to stop studying and run away from home. She is the second youngest child of ten siblings. Ima left home because there was a lot of pressure from her family to change, to be more of a “man.” In fact, Ima ran away several times, but every time she ran away, she would be found. Her father, a retired police officer, tied or handcuffed her after she was forcefully brought back home. Once, she was even locked in a room for several hours. Ima finally left home for good at the age of seventeen.

When Ima was in her teens, her older brother, a commander in the army, beat her and stripped her when he found her wearing women’s clothes. Ima blames herself for what her brother did because she feels that she embarrassed him by being the way she is.

Ima’s identification card retains her male name and male photograph, which makes it difficult for her to find formal employment. Presently, Ima makes her living as a sex worker. Ima resorted to sex work because she was denied factory jobs after every interview. She explained, “No matter how hard I try, it is as if society cannot accept people like me. So I gave up. I live as a Mak Nyah, like other Mak Nyahs, go out at night, I’m free, it’s easy, it’s easy money, so I began to live like this.”

Ima has been threatened by gangsters, and forced to pay “protection money” on a daily basis even when there are no clients. A man who hung out at the brothel where she worked raped her when she was under the influence of drugs. So far she has not been hit by officers of the Islamic Department or the police. But they harass her frequently because she is *Mak Nyah*.

Ima recounted, “There was a drug raid. I was not the only one at the house, but [there were] seven others. The police came to the house. With us, *Mak Nyah*, they would be rude, even though we talk politely with them. Like they don’t respect us. I had just gone to sleep at the time. I was working at a disco. I had another housemate who really used drugs. My body was clean. I hadn’t taken

any drugs. It was about 2 AM. The police were banging at the door, asking us to open the door. I opened the door, and he kept shouting rudely to unlock the front gate. I told him I was looking for the keys...but when I finally found the keys, they barged in, without taking off their shoes, so I lost my patience and told them off because it was disrespectful of them as Malay officers to enter a Malay person’s house with their shoes on. My urine sample was clear [of drugs] so the police officers could not arrest me. [One officer] tried to break my identity card into two. There’s a line there where he tried to break it. He was really rude. He said things to embarrass me, to put me down”.

There were also many raids by the officers of the Islamic Department. “They use Volunteers of Malaysian People (RELA) officers. The RELA officers don’t have any authority cards but they would break into our houses. They won’t show any warrants.” During one raid, Ima ran into her friend’s house. A RELA officer chased her there. “He didn’t have a warrant. He broke into the house to arrest me. Four others in the house were also arrested. They were all on motorcycles. They were not in uniform and they didn’t identify themselves. [One officer] used very rude language. After being arrested, we were all brought to the religious department of Perak. We were asked to take off our blouses so that they could see our breasts but that was not enough for them. They wanted to touch them. My personal details and clothes were taken. I was charged under the “man posing as woman” section of the syariah law and had to appear in court. But I didn’t admit guilt. This happened four times then [the hearing] got postponed, and finally my case was dismissed.

On a separate occasion, the same RELA officer arrested me and brought me to the religious department. He cut my skirt with a pair of scissors, exposing my underwear and then told me to go home. He cut my hair and then forced me to look for men’s clothes [provided by the religious department]. He cut my skirt because he was frustrated. There were no pants for my size.” [laughs].

Transwomen and pengkid interviewees in Penang reported experiencing employment-based discrimination. Some employers openly expressed that they did not hire lesbians because they are “trouble.” Other employers explicitly stated that they only wanted to hire gender-conforming people, including women who looked feminine.¹⁰⁷ Potential employers refused three transwomen employment opportunities even after the transwomen agreed to conform by dressing like men and cutting their hair.¹⁰⁸

Since the 1983 fatwa forbidding sex reassignment surgery for Malay Muslims, applications from Malay and Muslim transgender persons to change their assigned gender on their national identity cards have been rejected.¹⁰⁹ In Malaysia, it is challenging for transgender persons to change details to match their reassigned gender¹¹⁰ on official documents. There is no legal procedure for changing the gender on the identification cards of pre or non-operative transgender persons in Malaysia.¹¹¹ All applications for changes on the national identity card must go through the courts, giving

judges and administrative officers autonomy over transgender persons’ identity. However, the National Registration Department Guidelines No. 9 of 2007, which lists acceptable and non-acceptable reasons for name change, indicates that “name representing the wrong sex” is an acceptable reason for a legal name change. According to the Guidelines of 2007, the National Registration Department must change an applicant’s details on the national identity card if he/she is able to provide: a court declaration regarding her/his sex; a government doctor’s confirmation that SRS was completed; a verification from the hospital where the sex change was done; and a copy of the birth certificate. In reality, transgender persons are discriminated against, particularly if they do not hire a lawyer to file the legal application and argue the case. Malay Muslim transgender applicants face an added layer of discrimination because of religious prohibitions.¹¹²

Discrimination is not only directed at LBT persons but also at allies. A number of stakeholders who are allies of LBT persons told us that they lost job promotions, program funding or donations, and had been denigrated, confronted, questioned and verbally attacked by religious fundamentalists for supporting LGBT persons. One ally, Teh Yee Cheu, a state assemblyperson in Penang, who raised issues faced by transwomen such as welfare, discrimination and violence in the Penang state assembly, was verbally attacked by other members of the state assembly. He was called “*ketua pondan*” (leader of pondans), where *pondan* is a pejorative Malay term for gay men and transwomen.¹¹³

107 Ahmad, interview with research team member, November 2010.

108 Jess, interview with research team member, March 2011. Mas, interview with research team member, March 2011. Shirley, interview with research team member, January 2011.

109 In March 2011, Aleesha Farhana, a post-operative transwoman from Pahang, filed an application to change her name and gender in her identification card in response to difficulties she faced in her life. The judge Datuk Mohd Yazid Mustafa disallowed Aleesha’s application, as he feared that the name change would create an adverse social impact. See Farik Zolkepli, “Man seeks to change woman’s name,” The Star Online, May 26, 2011, <http://www.thestar.com.my/Story?file=%2f2011%2f5%2f26%2fnation%2f8756927&sec=nation>.

110 While generally the terms “male” and “female” are meant to denote the biological sex of the person concerned, these terms in themselves tend to take on the engendered expectations of society, the extended gendered socialised meanings of a biological male or female. Hence, we have decided to use the term “assigned gender” rather than “biological sex” or “sex” in this context.

111 A legal precedent was set by Justice James Foong when he presided over a case pertaining to a post-operative transgender person. See Honey Tan, Jeffrey Jessie: Recognising Transexuals, *The Malaysian Bar*, http://www.malaysianbar.org.my/gender_issues/jeffrey_jessie_recognising_transexuals_by_honey_tan_lay_ean.html.

112 The National Registration Department turns down applications by transgender persons to change their details such as name and gender to match their reassigned gender, generally across ethnicities but especially applications by Malay Muslims. This poses many challenges for transgender persons in their daily lives. So long as a person’s identification card says “male,” that person is treated as a man and is likely to be subjected to ridicule or abuse if her gender expression does not match the identification card.

113 In July 2013, Teh appointed Hezreen Shaik Daud, a transwoman as his political secretary and to oversee the welfare of the transgender community in Penang. He also lobbied the Penang State Assembly to set up a special committee to study the issues faced by the transgender community in Penang. See Josephine

IMPACT OF VIOLENCE AND COPING METHODS

Physical violence by family members led several LBT persons to leave home at a young age. Eight out of 45 interviewees (5 transwomen, 2 lesbians and one transman) ran away from home as teenagers to escape physical and other forms of violence – in some cases as young teens. Fred, a 24-year-old transman, was forced to leave home at age eighteen because of the violence he experienced from his father and the growing tension in the home. He relocated to another country.¹¹⁴ Economic and emotional violence from family members also drove LBT persons away from home. Fatima, a 37-year-old Malay lesbian, was outed to her family members by an unknown source when she was nineteen. Her parents withdrew financial support although she was in school and economically dependent on them. They subjected her to prolonged silent treatment. Fatima was forced to leave home. She moved to a different city.¹¹⁵ Some interviewees, who left home to escape violence, either moved in with their lover or partner or had friends from the community who were willing to support them emotionally.

Another impact of family rejection and condemnation is that some of the transwomen believed that their gender identity and gender expression were the result of their fathers' sins, a burden they

had to carry throughout their lives. Ann believes that she was born a transwoman because of the sins committed by her father, a curse placed on him by other transwomen whom her father had abused. However, Ann is very certain about her gender identity, and does not think of herself as a boy.¹¹⁶ Gia, a Malay transwoman in her late forties, also blamed bad karma. Like Ann, Gia believed that her father's hostile treatment towards transwomen resulted in her being born as a transwoman. Some of Gia's transwomen friends share that same belief.¹¹⁷

LBT interviewees who were unable to leave home used various methods to cope with physical and emotional violence by family members. One transman, two transwomen and two lesbians said that they isolated themselves in their rooms or dodged family functions to avoid different kinds of family violence. Ellen is a 31-year-old lesbian, whose mother beat her because of her sexual orientation. She isolated herself by staying in her bedroom to avoid interacting with her mother, saying, "less interaction, less nagging, less beatings and physical pain." She noted that even as an adult now, she still spends most of her time in her bedroom more than any other room in her house.¹¹⁸ Another lesbian, Bear, 27 years old and a Malay Muslim, also employed the same method of coping and withdrew herself from her family members when they subjected her to emotional violence upon discovering her sexual orientation.¹¹⁹ Emilia, a 24-year-old Chinese transwoman bound her breasts whenever she attended a family function to avoid attention being drawn to herself.¹²⁰ Shirley, a 34-year-old transwoman, who now lives on her own, said



Jallen, "Transgender political sec of Tanjung Bungah rep hopes for equal treatment," *The Star Online*, July 12, 2013, <http://www.thestar.com.my/News/Nation/2013/07/12/Transgender-Tanjung-Bunga-rep.aspx>.

114 Fred, interview with research team member, April 2011.

115 Fatima, interview with research team member, April 2011.

116 Ibid.

117 Gia, interview with research team member, February 2011.

118 Ellen, interview with research team member, February 2011.

119 Bear, interview with research team member, April 2011.

120 Emilia, interview with research team member, January 2011.

that she hated family gatherings. She explained, “All eyes would be on me [and] during hari raya [Eid, a Muslim festival], every year, a lot of relatives will come over to the house, and that’s the most torturous time for me because everybody talks about me like, arrrggghhh, I don’t want to hear!’ I always like to stay in the room and don’t come out or meet people.”¹²¹ Another lesbian who was heavily pressured to marry said she avoided family functions.

Some interviewees isolated themselves from the public to spare their family members from having to listen to verbally humiliating questions about the LBT individuals’ sexual orientation or gender identity. These questions were asked by visitors to the home or even strangers.

Discriminatory school environments disrupted LBT student education. Many transgender students, forced to dress in clothes that did not match their gender identity and lesbians whose sexual orientation was discovered, said that they fell behind in their studies because they simply could not focus. Four interviewees actually dropped out of school at an early age, which they said deprived them of an education.

The use of religion had serious negative impact on LBT persons. Pengkid interviewees, who had been repeatedly told that being in a relationship with a woman is sinful and condemned by religious authorities, told us they hoped one day to revert to their assigned female gender and be married with a family in order to lead a “normal” life. These individuals see themselves as sinners for having intimate relationships with women. Malay Muslim transwomen told us that they wanted to revert to their assigned male gender as they approach old age because in Muslim burial rituals, only members of the same assigned gender as the deceased are allowed to bathe her/him, which leaves transgender persons in limbo. Also according to the Malay Muslim custom, women are not allowed to bathe post-operative transwomen.¹²²

Some Malay Muslim transwomen said they opted out of SRS or any irreversible surgeries because of religious beliefs and culture.

In situation of public violence, coping included “normalizing” the violence. Many interviewees learned to ignore the violence to the extent that they now feel no longer consciously bothered or affected by it, especially verbal violence by strangers. Ima, a transwoman who experienced verbal violence, rape, extortion, and other forms of violence said she has normalised the violence she faces as a way of coping.

In public situations, LBT persons with adequate material or financial resources were able to prevent, avoid or get out of potentially violent situations that for instance involved police officers, anti-vice officers or religious department officers. Some LBT interviewees used their ethnicity to get out of such situations.

Home health remedies were one way that many LBT persons avoided dealing with medical institutions that were unfriendly and abusive to LBT patients. Interviewees told us that they opted for alternative medicine and self-medication for non-life threatening health issues. This gave them a sense of having more control over their health needs.

Self-harm and suicide were also some ways of coping. Some LBT interviewees reported that the violence and discrimination they faced drove them to attempt suicide, cut themselves and excessively consume alcohol and drugs. At least three interviewees revealed that they had attempted suicide because they were confused about their sexual orientation and gender identity, and had no access to assistance to address the violence that they faced. One interviewee sought assistance from the Befrienders helpline for depression because of her sexual orientation.

121 Shirley, interview with research team member, January 2011.

122 Y. K. Teh, *Mak Nyahs (Male Transsexuals) in Malaysia: The*

Influence of Culture and Religion on their Identity. IJT 5,3, (2001), http://www.symposion.com/ijt/ijtvo05no03_04.htm.

Interviewees named family members and friends as their main support system. When this support system became a perpetrator of violence, many had to find creative and healthy outlets for their frustration and pain. Some turned to music while others went on Facebook to rant, seek some calm or distract themselves.

A number of interviewees were aware of online communities – individuals, collectives and organizations that assist LGBT persons. However, most of them had not sought assistance from these online communities primarily because they felt that they were capable of resolving their problems on their own or with the assistance of their friends.

LEGAL SYSTEM AND LBT PEOPLE

In Malaysia, secular laws – Criminal and Civil – and Islamic or syariah laws co-exist to govern its citizens. Syariah laws are administered at a state level by religious departments, syariah courts and muftis. These laws apply only to Muslims regarding issues such as marriage, divorce, and the creation and punishment of offences in relation to Islam.¹²³ With the state endorsing Islamic dominance in Malaysia, fatwa also plays a very important role in shaping non-religious public policies and enactment of secular laws. In 1983, the Council of Rulers imposed a ban on SRS for Muslims through a fatwa. Since then, many additional fatwas have been introduced to prohibit Muslims from changing their assigned gender on the national identification card and to prohibit Muslim women from masculine gender expression (i.e., pengkid, butch women or tomboys). Fatwas are enforceable only after they have been gazetted but many are treated as if they are law regardless of their gazetted status.

123 In practice, this is not necessarily so. See Norani Othman, Zainah Anwar and Zaitun Mohamed Kasim, "Malaysia: Islamization, Muslim politics and state authoritarianism, Muslim Women and the challenge of Islamic extremism."

Secular Laws

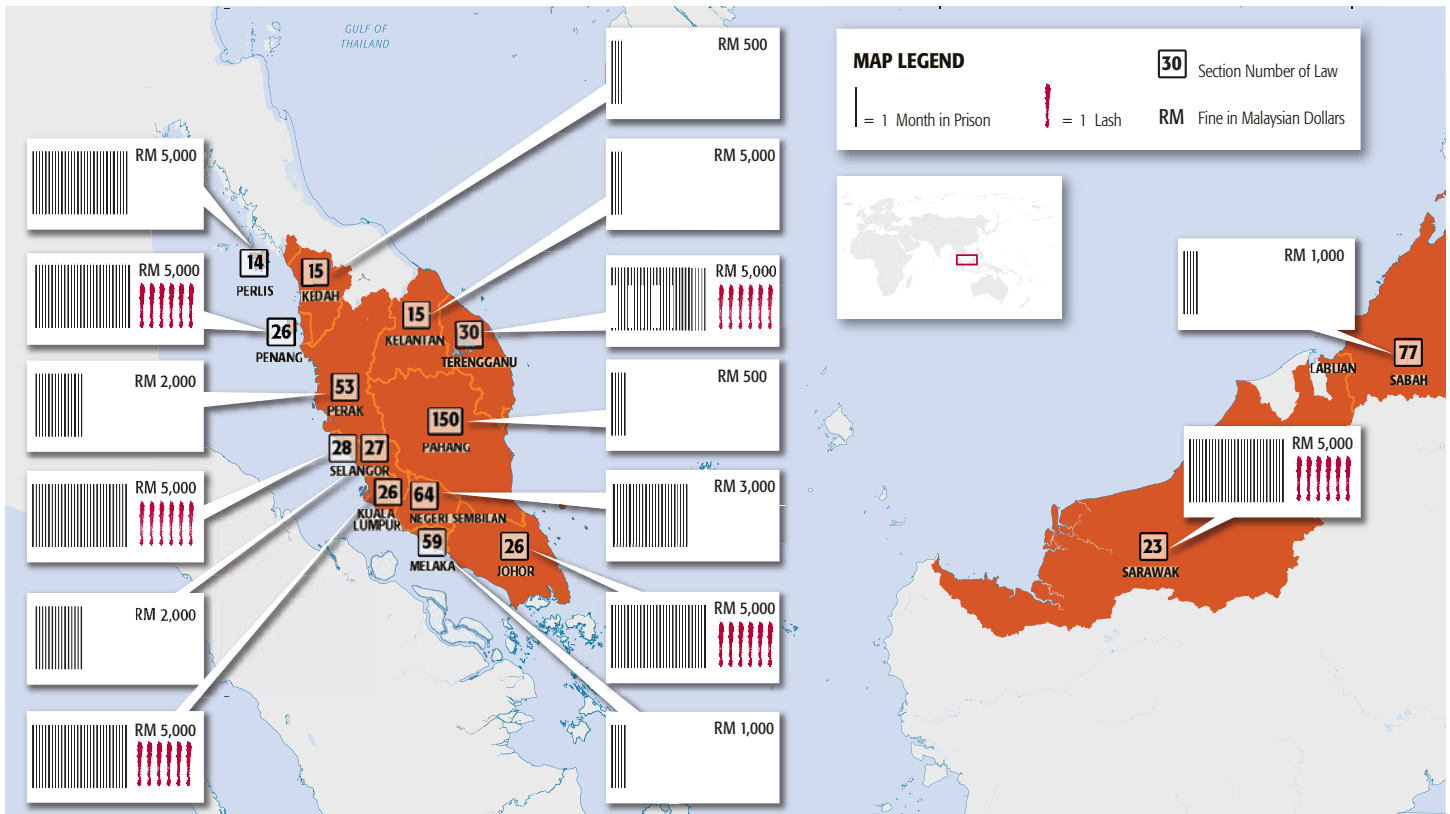
Section 377 comes under Unnatural Offences in the Malaysian Penal Code (Act 574). Sections 377A and 377B criminalise "carnal intercourse against the order of nature" (anal sex, oral sex) between consenting adults regardless of the sexual partner's gender, as well as gross indecency.¹²⁴ These sections of the Penal Code have reportedly been invoked only seven times since 1938,¹²⁵ four of which were against Anwar Ibrahim, the former Deputy Prime Minister.¹²⁶ Punishment for "carnal intercourse against the order of nature" is prison up to 20 years with liability for whipping. Section 377C criminalises rape – non-consensual sexual intercourse that involves oral and anal sex acts carried out under threat of death or hurt to the victim. Punishment for these acts of rape is a prison term of not less than five years and not more than twenty years with liability for whipping. The prevalent notion as expressed in 377C is that oral and anal rape is a lesser crime than anal and oral sex between consenting adults. Section 377D covers "outrage on decency" and criminalises the commission of, attempt to, or conspiracy to commit any act of gross indecency. Punishment is two years in prison.

124 Laws of Malaysia, Act 574 Penal Code, <http://www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf>.

125 Ahmad Fuad Rahmat, "A review of 'Homosexuality, Right or Crime?'," *The Malaysian Insider*, <http://www.themalaysianinsider.com/sideviews/article/a-review-of-homosexuality-right-or-crime-ahmad-fuad-rahmat>.

126 Anwar Ibrahim was accused of having "unnatural sex" with two men in 1998 and again with his political assistant in 2008.

SYARIAH (SHARIA) PENALTIES IN MALAYSIA FOR SAME-SEX RELATIONS BETWEEN WOMEN (*MUSAHAQAH*)



Section 21 Minor Offences Act 1955 (Act 336)¹²⁷

is a federal law that criminalises drunken, disorderly, or indecent behaviour in public or in the immediate vicinity of a court, public office, police station or place of worship. Punishment is a fine that can be as high as 25 Malaysian ringgit or prison for not more than fourteen days. Second or subsequent convictions result in a fine of 100 Malaysian ringgit, prison for not more than three months, or both. This law is used against transwomen for “disorderly or indecent behaviour.”

There are no specific secular laws that criminalise transgender sex workers, though sex work is criminalised under the secular law in Malaysia. Consequently, the Minor Offences Act is used to criminalise transgender people who are or are perceived to be doing sex work and also for cross-dressing (men posing as women). Both cases are treated as indecent behaviour.

Syariah Laws

Three provisions under syariah laws in Malaysia directly criminalise same-sex sexual relations and gender non-conformity: *musahaqah* (sexual relations between women), gender non-conforming behaviour (*tasyabbuh* or “female posing as man” as well as “male posing as woman”), and *liwat* (carnal intercourse or sex against the order of nature). Unlike the Penal Code that explicitly defines a sex act, the syariah laws allow for a wider subjective interpretation of its offences. For a list of syariah laws and penalties that directly affect LBT persons,¹²⁸ see Appendix B and Appendix C.

¹²⁷ Laws of Malaysia, Act 336, Minor Offences act of 1955 (Revised 1987), <http://www.agc.gov.my/Akta/Vol.%207/Act%20336.pdf>.

¹²⁸ Ibid.

RECOMMENDATIONS

The Malaysian government's interpretation of Islamic law serves as a rationale for opposing efforts by the international community to promote and protect the rights of LBT persons. The Yogyakarta Principles, which serves as a premise for applying international human rights law to the lives of LBT persons, has little traction with the Malaysian government. International human rights mechanisms have few concrete tools to compel the Malaysian government to discharge its human rights obligations, and state institutions are slow to implement international human rights instruments and consensus documents. This occurs in part because public officials are inadequately trained and in part because there is no political will. Much work is needed on the ground to train lawyers, judges and policymakers on Malaysia's international human rights obligations.

The following recommendations to the government of Malaysia were included under the section on the General Recommendation 28 of the Malaysian NGO CEDAW Alternative Report 2012.¹²⁹ Some of these recommendations were also made to the ASEAN Intergovernmental Commission on Human Rights (AICHR).¹³⁰ Based on the research findings, the Malaysian Government is called to undertake the following actions:

1. To treat all people of diverse sexual orientation, gender identity and gender expression as equals and with respect and dignity.
2. To have consistent and meaningful dialogues with LBT rights groups and relevant stakeholders before developing policies and laws concerning LBT persons.
3. To immediately repeal all laws that directly and indirectly criminalise sexual orientation, gender identity and gender expression; and to harmonise the Yogyakarta Principles with national laws, policies and practices by:
 - Repealing Sections 377A, 377B and 377D of the Penal Code;
 - Repealing Section 21 of the Minor Offences Act 1955 that is used to control and persecute transpeople as well as women;
 - Repealing “liwat” and “musahaqah” under the syariah criminal offences laws; and
 - Repealing “male person posing as a woman”, or vice versa under the syariah criminal offences laws.
4. To expand the understanding of “gender” to include people of diverse sexual orientation and gender identity; and to include “sexual orientation” and “gender identity” in Article 8 of the Federal Constitution of Malaysia, prohibiting discrimination based on sexual orientation and gender identity.
5. To legally recognise transgender persons, both pre-operative and post-operative, as a legitimate identity by allowing transgender persons to change their name, gender and digits in their identification cards and all legal documents to match their reassigned gender.
6. To lift the ban on sex reassignment surgery and reintroduce sex reassignment surgery services, including official pre- and post-operative counselling in hospitals as per the law prior to 1983
7. To immediately stop all LBT corrective programs in schools; to establish policies to prevent programs that promote negative stereotypes of and discrimination against LBT persons; and to prohibit programs that will be damaging to the development of LBT children.

¹²⁹ “Malaysian NGO CEDAW Alternative Report 2012,” Women’s Aid Organisation, <http://www.wao.org.my>.

¹³⁰ “Statement of the First ASEAN Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) People’s Caucus,” ASEAN People’s Forum, May 3-5, 2011, <http://www.iglhr.org>.

APPENDIX A: GLOSSARY OF TERMS

Anak ikan is a term used for boys or young men who seek sexual services or fancy transwomen or gay men.

Bapok is a derogatory term to address gay men or transwomen. Equivalent of faggot.

Cendut is a colloquial term for sex work.

Fatwa means religious opinion.

Hadd is also known as hudud.

Jambu is a term used for young effeminate boys or pretty boys.

Ladyboy is a self-identifying term used by transwomen when referring to each other or themselves.

Liwat refers to sexual relations between men.

Mak ayam literally means mother hen. A term that is commonly used for older, senior transwoman who supervises and guides younger transwomen.

Mak nyah is an umbrella term for transwomen in Bahasa Melayu. This term has been reclaimed by the transwomen community. Mak Nyah is a combination of two words. Mak means mother. Nyah comes from the word “baba and nyonya,” a community in Malacca.

Mufti is a professional jurist who interprets Islamic law.

Musahaqah or Musahakah refers to sexual relations between women.

Ombote literally means number nine in Tamil. It is used as a derogatory term for effeminate men and transwomen

Pengkid or peng are terms used almost exclusively for the Malay community and broadly refers to Malay girls or women who: dress in a masculine way and take on a “masculine roles;” use gender neutral or ambiguous names; bind their chests; are in romantic relationships with women; and/or are butch lesbians and transmen.

Pondan is an insulting term, used to address gay men or transwomen. Equivalent of faggot.

Sotong literally means squid. Commonly used to insult effeminate boys or men and transwomen.

Takzir or ta’zir refers to penalties for crimes that are not proscribed in the Al-Quran and Al-Hadith.

Tasyabbuh literally means imitating or copying, establishing or relating to, and following.

Thirunangai is an umbrella term for transwomen in Tamil. This word has only recently been discovered by the transwomen community.

Ummah refers to a collective nation or Islamic state.

APPENDIX B:

SYARIAH (*SHARIA*) PENALTIES IN MALAYSIA FOR SAME-SEX RELATIONS BETWEEN WOMEN (*MUSAHAQAH*)

STATE IN MALAYSIA	SECTION OF SYARIAH LAW	READING OF THE LAW
JOHOR	Section 26 <i>Musahaqah</i>	Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to whipping not exceeding 6 strokes or to any combination thereof.
KEDAH	Section 15 <i>Musahaqah</i>	Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 500 Ringgit or to imprisonment for a term not exceeding 4 months or to both.
KELANTAN	Section 15 <i>Musahakah</i>	Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 4 months or to both.
MELAKA	Section 59 <i>Musahaqah</i>	Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 1000 Ringgit or to imprisonment for a term not exceeding 6 months or to both.
NEGERI SEMBILAN	Section 64	Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 3000 Ringgit or to imprisonment for a term not exceeding 2 years or to both.
PAHANG	Section 150 Sexual relations with/between women	Any Muslim female person who engages in a sexual act another Muslim or non-Muslim female person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 500 Ringgit or to imprisonment for a term not exceeding 3 months or to both.
PERAK	Section 53 <i>Musahaqah</i>	Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 2000 Ringgit or to imprisonment for a term not exceeding 1 year or to both.
PERLIS	Section 14 <i>Musahaqah</i>	Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to both.

SYARIAH (*SHARIA*) PENALTIES IN MALAYSIA FOR SAME-SEX RELATIONS BETWEEN WOMEN (*MUSAHAQAH*) *(continued)*

STATE IN MALAYSIA	SECTION OF SYARIAH LAW		READING OF THE LAW
PENANG	Section 26	<i>Musahaqah</i>	Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to whipping not exceeding 6 strokes or to any combination thereof.
SABAH	Section 77	<i>Musahaqah</i>	Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 1000 Ringgit or to imprisonment for a term not exceeding 6 months or to both.
SARAWAK	Section 23	<i>Musahaqah</i>	Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to whipping not exceeding 6 strokes or to any combination thereof.
SELANGOR	Section 27	Sexual relations between persons of same gender	Any person who engages in a sexual act with another person of the same gender shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2000 Ringgit or to imprisonment for a term not exceeding 1 year or to both.
	Section 28	Sexual intercourse against the order of nature	Any person who performs sexual intercourse against the order of nature with any man, woman or animal is guilty of an offence and shall be liable on conviction to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to whipping not exceeding 6 strokes or to any combination thereof.
TERENGGANU	Section 30	<i>Musahaqah</i>	Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to whipping not exceeding 6 strokes or to any combination thereof.
WILAYAH PERSEKUTUAN KUALA LUMPUR	Section 26	<i>Musahaqah</i>	Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to whipping not exceeding 6 strokes or to any combination thereof.

SYARIAH (SHARIA) PENALTIES IN MALAYSIA FOR GENDER NON-CONFORMING BEHAVIOURS

CRIMINALIZATION OF TRANSGENDER WOMEN

According to syariah laws in all thirteen states and in the federal capital of Malaysia, Kuala Lumpur: any male person who, in any public place, wears a woman's attire and poses as a woman shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 1000 Malaysian ringgit or to imprisonment for a term not exceeding one year or to both.

CRIMINALIZATION OF TRANSGENDER MEN, BUTCH LESBIANS, WOMEN WHO CROSS DRESS, MASCULINE APPEARING WOMEN

Additionally, in the state of Sabah, any female person who, in any public place, wears a woman's attire and poses as a man shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 1000 Malaysian ringgit or to imprisonment for a term not exceeding one year or both.

Higher penalties are imposed in the states of Pahang and Perlis, where any female person who, in any public place, poses as a man (tasyabbuh), shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand Malaysian ringgit or to imprisonment for a term not exceeding one year or to both.

Until May 2012, Pahang was the only state that did not penalise gender non-conformity. It is reported that because of LGBT visibility, it now has syariah laws relating to "male persons posing as women" and "female persons posing as men."¹³¹

¹³¹ Rosilawato Rosedi, *Awas geng mak nyah, tomboi*, <http://www.sinarharian.com.my/edisi/pahang/awas-geng-mak-nyah-tomboi-1.50263>

APPENDIX C:

PUBLIC MORALITY LAWS IN MALAYSIA AGAINST *LIWAT* OR “SEX AGAINST THE ORDER OF NATURE”

STATE IN MALAYSIA	SECTION OF SYARIAH LAW	READING OF THE LAW
KEDAH	Section 14 <i>Liwat</i>	Any person who willfully commits an act of <i>liwat</i> shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to both. ¹³²
KELANTAN	Section 14 <i>Liwat</i>	Any person who willfully commits an act of <i>liwat</i> that cannot be punished under the hadd laws (hudud) according to the hukum syarak (Islamic laws) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to both. ¹³³
MELAKA	Section 56 <i>Liwat</i>	Any person who willfully commits an act of <i>liwat</i> shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 36 months or to both. ¹³⁴
	Section 57 Attempt to commit <i>Liwat</i>	Any person who performs sexual intercourse against the order of nature with any man, woman or animal has to be punished in accordance to takzir and shall be liable on conviction to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 36 months or to whipping not exceeding 6 strokes or to any combination thereof. ¹³⁵
MELAKA	Section 58 Sexual intercourse against the order of nature	Any person who attempts to perform unnatural sex is guilty of an offence and shall be liable on conviction to a fine not exceeding 3000 Ringgit or to imprisonment for a term not exceeding 24 months or to both. ¹³⁶

132 Enakmen Kanun Jenayah SyariahSyariah 1988 <http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portallv1/undangbm.nsf/allp/4D82C56A5480936548256F85000279B1?OpenDocument>

133 Enakmen 2 Tahun 1985 Enakmen Kanun Jenayah SyariahSyariah 1985 http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portallv1/enakmen/State_Enact_Upd.nsf/f831ccddd195843f48256fc600141e84/1fdaf69939457a4b482573a6001a9dca?OpenDocument

134 Enakmen 6 Tahun 1991 Enakmen Kesalahan SyariahSyariah (Negeri Melaka) 1991 http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portallv1/enakmen/State_Enact_Ori.nsf/100ae747c72508e748256faa00188094/011744f940f251f04825707d002a1424?OpenDocument

135 Enakmen 6 Tahun 1991 Enakmen Kesalahan SyariahSyariah (Negeri Melaka) 1991 http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portallv1/enakmen/State_Enact_Ori.nsf/100ae747c72508e748256faa00188094/84a6a5cb3f30215f4825707d002a284c?OpenDocument

136 Enakmen 6 Tahun 1991 Enakmen Kesalahan SyariahSyariah (Negeri Melaka) 1991 http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portallv1/enakmen/State_Enact_Ori.nsf/100ae747c72508e748256faa00188094/74b75e1cee4acd884825707d002a3b0f?OpenDocument

STATE IN MALAYSIA	SECTION OF SYARIAH LAW	READING OF THE LAW
	Section 49	Conspiracy to commit sexual intercourse against the order of nature
		Ringgit or to imprisonment for a term not exceeding 24 months or to both. ¹³⁷
NEGERI SEMBILAN	Section 65	<i>Liwat</i>
		Any person who performs sexual intercourse against the order of nature with any man, woman or animal is guilty of an offence and shall be liable on conviction to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 2 years or to both. ¹³⁸
PERAK	Section 48	Un-natural sex
		Any person who performs unnatural sex is guilty of an offence and shall be liable on conviction to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to both and to whipping not exceeding 6 strokes. ¹³⁹
	Section 49	Attempt to have un-natural sex
		Any person who attempts to perform unnatural sex is guilty of an offence and shall be liable on conviction to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to both. ¹⁴⁰
PERLIS	Section 13	<i>Liwat</i>
		Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to both. ¹⁴¹

¹³⁷ Enakmen 6 Tahun 1991 Enakmen Kesalahan SyariahSyariah (Negeri Melaka) 1991 http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portalv1/enakmen/State_Enact_Ori.nsf/100ae747c72508e748256faa00188094/4db8d0ac742b46f14825707d002a02fd?OpenDocument

¹³⁸ Enakmen 4 Tahun 1992 Enakmen Jenayah SyariahSyariah Negeri Sembilan 1992 http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portalv1/enakmen/State_Enact_Ori.nsf/100ae747c72508e748256faa00188094/248c3c8da5eb8b10482570dd00064b5f?OpenDocument

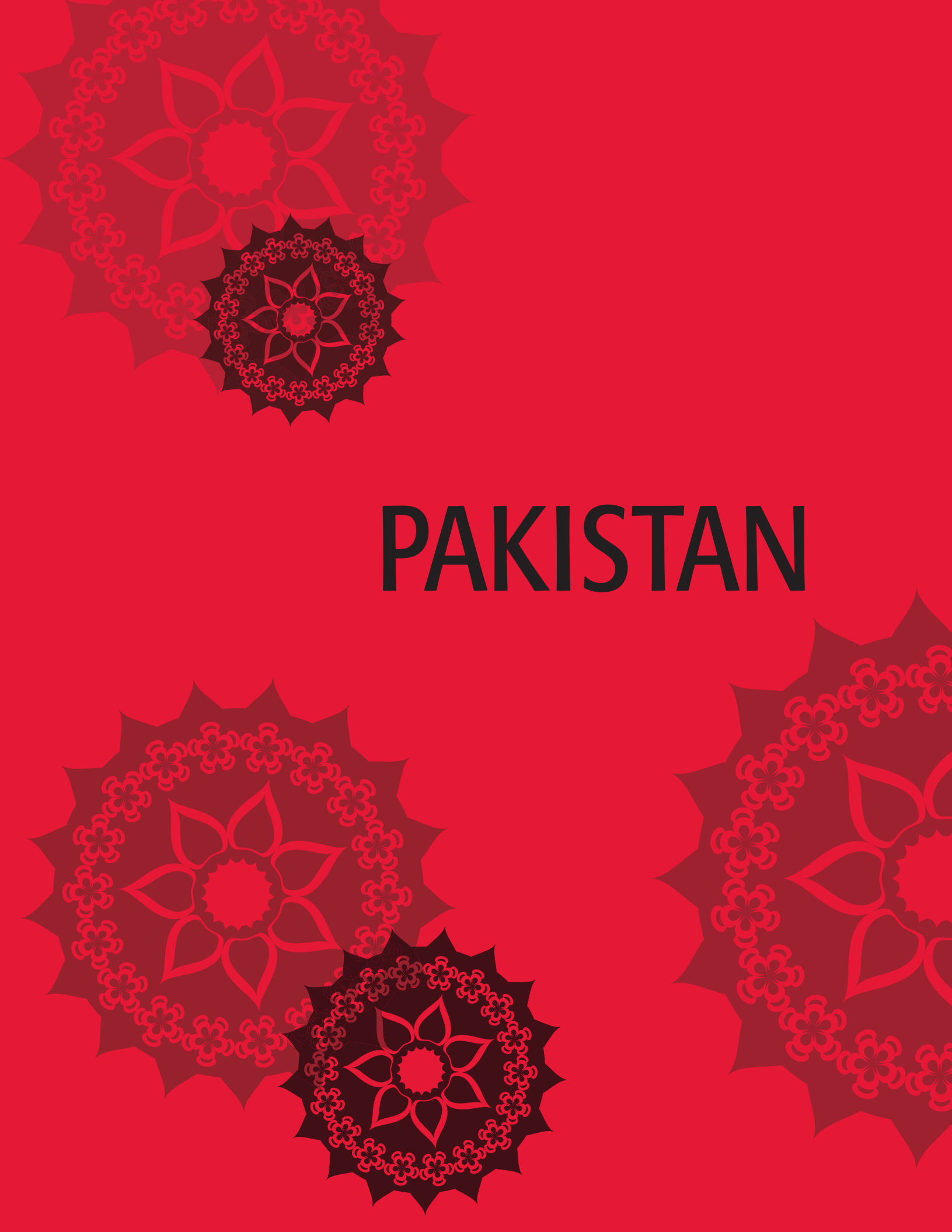
¹³⁹ Enakmen 3 Tahun 1992, Enakmen Jenayah (SyariahSyariah)1992 http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portalv1/enakmen/State_Enact_Ori.nsf/100ae747c72508e748256faa00188094/c8e52d59dd5bcce8482572ad002dc463?OpenDocument.

¹⁴⁰ Ibid.

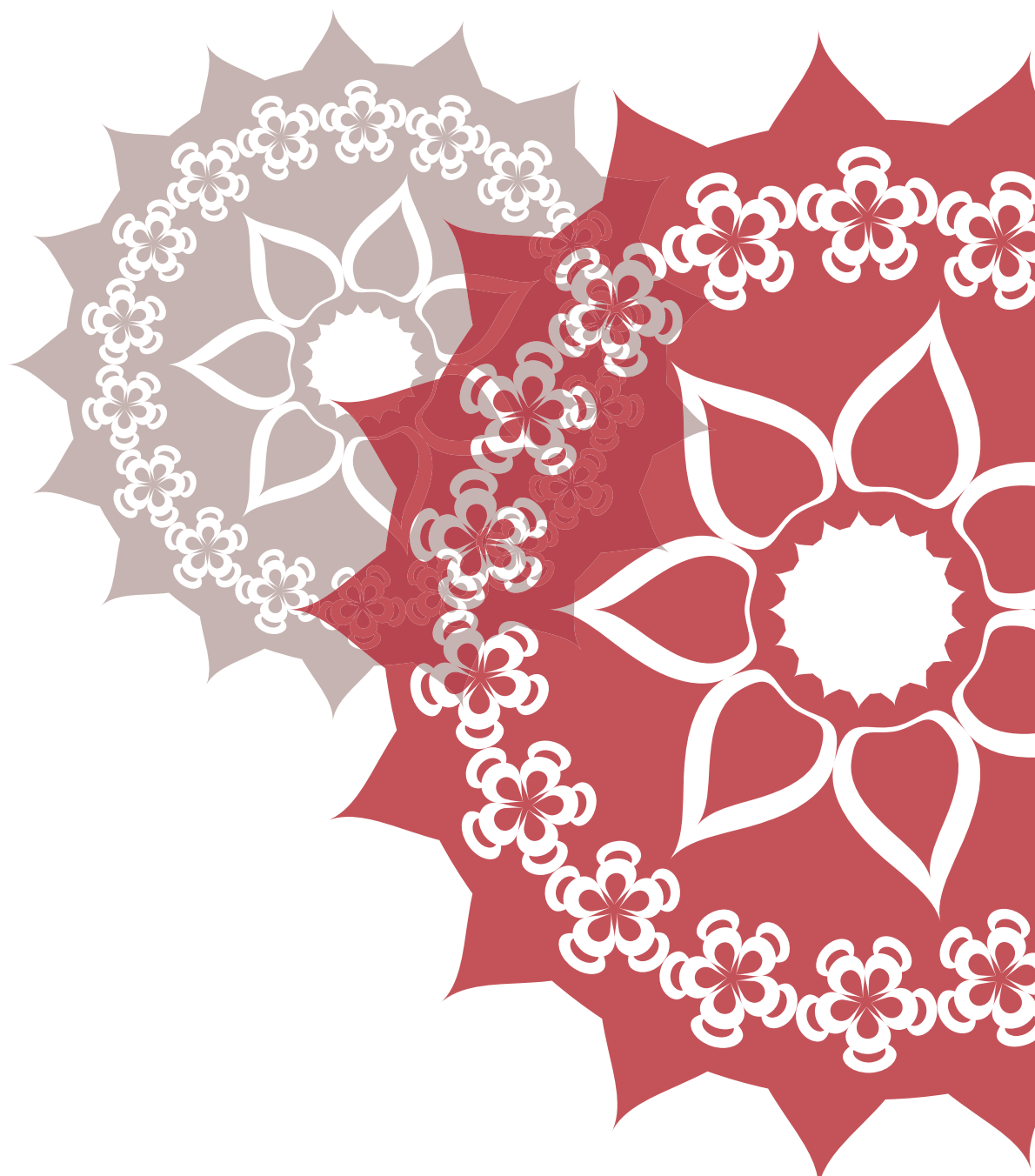
¹⁴¹ Enakmen Kanun Jenayah SyariahSyariah 1988 <http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portalv1/undangbm.nsf/allp/4D82C56A5480936548256F85000279B1?Opendocument>.

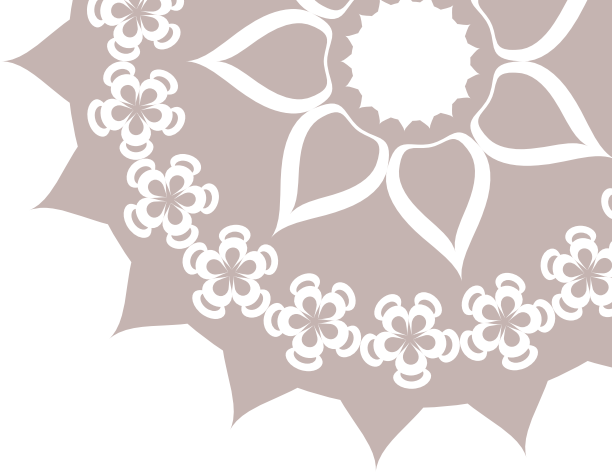
PUBLIC MORALITY LAWS IN MALAYSIA AGAINST *LIWAT* OR “SEX AGAINST THE ORDER OF NATURE” *(continued)*

STATE IN MALAYSIA	SECTION OF SYARIAH LAW	READING OF THE LAW
SELANGOR	Section 27	Sexual relations between persons of same gender
		Any person who engages in a sexual act with another person of the same gender shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2000 Ringgit or to imprisonment for a term not exceeding 1 year or to both.
	Section 28	Sexual intercourse against the order of nature
		Any person who performs sexual intercourse against the order of nature with any man, woman or animal is guilty of an offence and shall be liable on conviction to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to whipping not exceeding 6 strokes or to any combination thereof.
TERENGGANU		There are no syariah laws that specifically criminalise sex against the order of nature.
PAHANG		There are no syariah laws that specifically criminalise sex against the order of nature.
JOHOR	Section 25	Criminalise men for <i>liwat</i> but do not specifically target women for similar criminalization.
PENANG	Section 25	Criminalise men for <i>liwat</i> but do not specifically target women for similar criminalization.
SABAH	Section 82	Criminalise men for <i>liwat</i> but do not specifically target women for similar criminalization.
SARAWAK	Section 22	Criminalise men for <i>liwat</i> but do not specifically target women for similar criminalization.
KUALA LUMPUR	Section 25	Criminalise men for <i>liwat</i> but do not specifically target women for similar criminalization.

The image features a solid red background. In the four corners, there are decorative floral patterns. Each corner pattern consists of a large, light red mandala-like flower with multiple layers of petals and a smaller, dark red flower with a similar design nested inside it. The word "PAKISTAN" is centered in the middle of the image in a bold, dark blue, sans-serif font.

PAKISTAN





"WHERE I CAN ACTUALLY BE ME"

Experiences of Violence and Discrimination

O PAKISTAN



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INTRODUCTION

From December 2010 to March 2012, the members of O Pakistan conducted 50 interviews (41 with LBT individuals and 9 with stakeholders in the education, legal, non-governmental and journalism sectors).

Our method of identifying respondents was based very much on access and security. Because we belong to the community from which we have been collecting data and because there is a lot of risk attached to outing oneself, many of the respondents are friends and acquaintances.

Our first set of respondents was from among these. Using snowball sampling, we requested our contacts to put us in touch with people they knew personally. This method had limited success as, even after our mutual friends vouched for our work, many of the potential respondents were uncomfortable with either the idea of the interview in the first place or more specifically the main research focus: violence. Where possible, we asked for the reason for their reluctance to participate. Though we did not document their responses, as we considered that a violation of their stated wishes, we can summarise the responses in two ways: a simple fear of exposure; and a lack of confidence in the merits and impact of such a study, given that we live, as they asserted, in a repressive and dangerous environment.

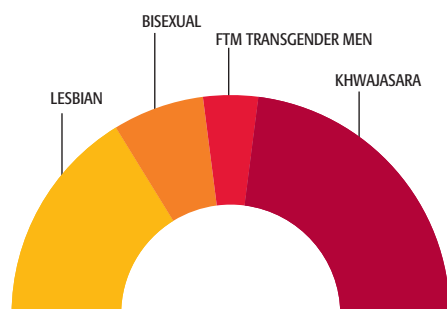
Due to a constraint of resources, not all the interviews were transcribed and translated from Urdu to English in time to be coded along with the rest of the data. This chapter is based on 23 out of the total 50 interviews that we conducted. It is a deep regret of ours that the majority of the data, which was left untranslated and uncoded is from our interviews with khwajasaras. Some of these interviews nevertheless have informed our analysis so that these experiences are part of this chapter.

Due to the research constraints and resulting bias in our sample, we are aware that the experiences we relay in this chapter are not representative of the life experiences of all LBT people in Pakistan. However, since it is clear that rights violations generally have more negative effect on those who are unconnected, resource-poor, or otherwise disadvantaged, we believe our research shows only the tip of the iceberg when it comes to discrimination and abuse. We have no doubt that many LBT individuals in Pakistan live their daily lives in fear. It is our hope that this research will contribute to changing that situation, even if only marginally.

INTERVIEWEE DEMOGRAPHICS

PAKISTAN

SELF-IDENTIFICATION: SEXUAL ORIENTATION



Out of the 41 LBT interviews, 12 people identified as lesbian, 5 as bisexual women, 3 as female-to-male (FTM) transgender men (with one identifying as both lesbian and FTM) and 17 identifying as khwajasara.¹ Three people chose not to have any specific identity and two chose other identity markers.

Most of the cisgender (gender identity and gender expression conforms to the gender assigned at birth) lesbian and bisexual women we interviewed were from Lahore, drawn from within our extended network. We had one respondent from Islamabad, one from Multan and three from Karachi – places where we have less of a presence and therefore were less able to establish the long-term trust that served us so well in Lahore.

The three FTM interviewees were from diverse backgrounds. Joan, who also identifies as a lesbian, is from a working class Christian background in Lahore. Umer comes from a middle class Ismaili Muslim family in Karachi and now permanently resides in the United States but still spends much of his time in Pakistan. Mari, who identifies as transgender but lives as a woman, is from a middle-class Muslim family in Lahore and is employed in a white-collar job; she earns a good income.

¹ Khwajasara is a term that refers to male-bodied individuals who identify with female gender roles and expressions and live together in communities. See Glossary.

Most of the khwajasaras we interviewed were reached through their Gurus (khwajasara community leaders), who are from two separate deras or households, one in Karachi and one in Lahore. Through mutual acquaintances, we made contact with each Guru and explained our project. Each Guru considered our project and then allowed us to meet her *chelas* or disciples. The Gurus also asked that we monetarily compensate her *chelas* for their time as we were interrupting their workday, and we obliged.

PAKISTAN

LOCATIONS OF LBT INDIVIDUALS INTERVIEWED



Most of our respondents came from Muslim backgrounds, though some Christian respondents are represented among the khwajasaras and two lesbian and bisexual women were Christian. Muslims make up 98% of the population of Pakistan. Religious groups are largely insular, and members of minority religious communities live amidst much violence and abuse meted out against them by some members of the Muslim-majority society.² These

² "Pakistan Christians Die in Unrest," BBC News, August 2, 2009, accessed on March 23, 2013, http://news.bbc.co.uk/2/hi/south_asia/8179823.stm; Rabia Mehmood, "Over 100 Ahmadi Graves Desecrated in Lahore" *The Express Tribune*, <http://tribune.com.pk/story/474468/over-100-ahmadi-graves-desecrated-in-lahore/>.

factors have limited our access across religious and class lines as our group is made of middle to upper-middle class LGBT people who are largely from Muslim backgrounds.

As a result of this snowball method of gathering respondents and the respondents' trepidation, our sample is somewhat skewed in terms of class dynamic. Most, though not all, of the lesbian and bisexual women belong to the middle or upper-middle class and are comfortable conversing in English or a mixture of English and Urdu. All of the khwajasara respondents belong to the lower-middle or working class and their interviews were conducted primarily in Urdu, with a few conducted in a mix of Urdu and Punjabi.

COUNTRY CONTEXT

While Pakistan is imagined in the current global climate to be a hotbed of terrorism, anti-woman sentiment, fundamentalism and radical Islamism, the fact of the matter is that the Pakistani context is far more complicated. Where there is religious extremism and violence, there is also resistance, solidarity and community building among those directly affected by local, national and international structures that fuel inequality and discrimination.

What complicates the Pakistani context is a mix of deeply ingrained, structural problems that are often at odds with each other and that pull ordinary Pakistanis in a variety of directions. The first is a growing Islamic sentiment within the government and the populace that burgeoned in the 1980s during the time of the dictator Zia. Zia-ul-Haq staged a military coup in 1977 and began an eleven-year reign in which Zia brought about a number of regressive laws under a guise of "Islamization," some of which explicitly restricted women's equality and promoted a vision of women as inherently immoral. The most infamous of this was the rape law under the Hudood Ordinances that required four male witnesses in order to prove that a rape had occurred. Laws and legal institutions enforce prevailing gender norms, which assume that all women are heterosexual, dependent on men, and do not display sexual desires.

These norms are enforced by the police and by other State institutions, creating an environment where women in same-sex relationships and others who do not gender-conform cannot freely express themselves or live their lives. (See "The Legal Landscape" section in this chapter for details).

Dovetailing with this is an anti-American sentiment occasioned by the US War on Terror and the continuous drone attacks on Pakistani people in the Northwest.³ Together, this creates a situation in which human rights advocates confront numerous barriers to their work, most notably a concern for the safety and security of those whose situations they seek to improve.

MANIFESTATIONS OF VIOLENCE

The most widely reported violence was emotional violence, ranging from sexually explicit verbal abuse in the streets to intense humiliation and psychological torture in the home. However, where physical and sexual violence were reported, the violence was often extreme and heinous. We have chosen to highlight the emotional, physical and sexual violence people face in their communities because these are the most prevalent types of violence. Most often the violence that LBT individuals face in their communities is a reflection of structural and institutional violence. Moreover, State actors often exert violence against LBT individuals and fail to protect LBT people from other non-State perpetrators. This creates a climate of permissiveness, where community members feel justified in their violence or discrimination of those who do not gender-conform.

3 "Demonstration: '230 Drone Strikes Carried Out in Past Five Years,'" *The Express Tribune*, March 5, 2013, accessed on March 23, 2013, <http://tribune.com.pk/story/515831/demonstration-230-drone-strikes-carried-out-in-past-five-years/>. Joshua Hersh, "Hina Rabbani Khar, Pakistan Foreign Minister: Drones Are Top Cause of Anti-Americanism," *Huffington Post*, September 28, 2012, http://www.huffingtonpost.com/2012/09/28/hina-rabbani-khar-drones_n_1922637.html.

Emotional Violence

There was a wide range of emotional violence reported by all respondents. In the case of lesbian and bisexual women, the emotional violence and mistreatment sometimes stemmed from being women. They were subjected to misogynistic treatment, and they experienced neglect and actions that invisibilised their existence, desires, and choices. The lesbians we talked to reported emotional, psychological and economic negligence (which included financial controlling behaviours) as well as physical and emotional violence, of which emotional violence was the most reported form of violence. As Patricia reported:

I was being ignored and neglected at home, my communication with my parents was non-existent at that time, and I used to think that I am unloved and I wasn't needed and there is no purpose of life.⁴

Ghazala, a 40-year old lesbian reported “a lot of restrictions”⁵ from her family, even after she entered the job market, with her family requiring her to be home by seven p.m. If her bus was late, she was interrogated: “Where did you go? Why are you late? Where are you coming from? Who did you meet?” Ghazala added, “My bag would be checked, my clothes would be searched. There was no way you could even meet someone, you could not talk to anyone, could not go anywhere.”⁶

Khwajasaras experienced verbal denigration on the streets in the form of ridicule, catcalling and cursing. They were harassed for their gender identity and gender expression. Falak, who works for a government tax-collection office, reported having a great deal of trouble travelling around Karachi in female clothes because men yelled verbal and

sexual abuses at her all along the way.⁷

Lesbian women reported verbal abuse by family members as well as their acquaintances and peer groups. Shaheen and her partner's acquaintances, on several different occasions, called them “carpet munchers,” and in one instance, a male acquaintance asked them to “kiss each other for their pleasure.” Shaheen reported that she and her partners were often “propositioned for the pleasure of a man or more than one man” in a social setting.⁸

Most of the lesbians we talked to were not out to their families. The women who identified as butch or were more masculine presenting were pressured to talk, behave and act more womanly or feminine. Anam explained:

Yeah they always used to criticise me, ‘what the hell are you wearing?’ And I used to talk like, boys, like really loud, you know, like a gangster-style, sort of thing. And they used to criticise me, ‘what the fuck is that. Nothing you do is like a girl, what's your problem?’⁹

Transgender men also felt the policing of gender strongly. Umer reflected how this bothered him:

... more was when they put me in girl's clothing, rather than the physical [abuse] ... Yeah, that hurt, but I got over it. But the feeling of discomfort, I got so uncomfortable when they put me in female, feminine outfits. Ugh, I hated it, it would really ruin my day, my evening! It really would!¹⁰

Notions of the absolute necessity of marriage are linked to respectability, being a good daughter and even a good Muslim. Family members as well as peers see homosexual desire as a threat to family stability and religious integrity, both individual and social.

4 Patricia, pansexual. Organization for the Protection and Propagation of the Rights of Sexual Minorities (O Pakistan), Lahore, 2010.

5 Ghazala, bisexual. O Pakistan, Lahore, 2011.

6 Ghazala, bisexual. O Pakistan, Lahore, 2011.

7 Falak, khwajasara. O Pakistan, Karachi, 2011. Uncoded interview.

8 Shaheen, lesbian. O Pakistan, Karachi, 2011.

9 Anam, lesbian. O Pakistan, Karachi, 2011.

10 Umer, transgender man. O Pakistan, Karachi, 2011.

21-year old Zuleikha, a bisexual woman, said that the woman she was in love with responded to her confession of love by telling her that, according to Islam, “There is no room for such love. This is not normal.”¹¹ Zuleikha is very religious and observant, and believed, along with her peer group and the woman she loved, that marriage is a cure to all the problems in her life. She said, “... Like, I don’t have anybody in my life, anybody to love. That emotionally as well as physically, both would go if I got married.”¹²

Joan and her partner, a working class Christian couple, tried to move to Dubai to work in a salon; they were in search of a place where they could live together without family pressure. But they found themselves being forced to do sex work in Dubai. Once they managed to escape from there, with a great deal of stress, they were returned to the situation in Pakistan from which they had tried to free themselves – poverty and familial abuse.¹³ On her return, Joan found herself feeling demoralised and downcast:

I feel helpless, because every day and every night, Maria lives at her parents’ house. Now her father is also living with her. Her marriage is under discussion [by the family]. And when I hear it, I ... feel weary. For how long will I be able to stop these people? Or for how long they are going to face the resistance? ... And Maria says we cannot live this way in Pakistan. People say a hundred things here, she says once we’re out of Pakistan we are going to live all our lives together. And if things don’t work out, her family is going to marry her off.¹⁴

Joan’s weariness and depression comes from the two of them having endured verbal abuse, physical abuse, sexual abuse and economic abuse (in terms of eviction and loss of property). Their

desire to leave the country is coupled with a desire to be able to live openly, free from the barrage of pressures that their families and society constantly place on them.

Physical Violence

Physical violence was often part of the repressive environment in the home. Homosexual and gender non-conforming individuals are threatening to social balance because they do not reinforce the heterosexual family structure and the male as head of household. Consequently, physical violence in the natal family (family of origin) was disturbingly common, triggered by disobeying social and cultural expectations, gender non-conformity, rebelling against repressive gender practices, being caught in homosexual activity, or being discovered in a homosexual relationship. Some are even killed by their relatives.

... where physical and sexual violence were reported, the violence was often extreme and heinous.

Perpetrators of family violence were usually parents, supported by siblings and, in joint family homes, extended family members as well.

Umer, a transgender man from Karachi, reported being beaten up by his father several times because he did not dress appropriately for his gender. He said, “... he even beat me up for cutting my hair too short.”¹⁵

Ghazala, a bisexual woman from Lahore, reported that members of her extended family would frequently taunt her, asking her parents “Why does she act like boys? Her attire is not womanly at all, what will we do when she gets married? People don’t like girls who act like boys.”¹⁶

11 Zuleikha, bisexual. O Pakistan, Lahore, 2011.

12 Zuleikha, bisexual. O Pakistan, Lahore, 2011.

13 Joan, lesbian/transgender man. O Pakistan, Lahore, 2011.

14 Joan, lesbian/transgender man. O Pakistan, Lahore, 2011.

15 Umer, transgender man. O Pakistan, Karachi, 2011.

16 Ghazala, bisexual. O Pakistan, Lahore, 2011.

Particularly severe is the case of Sherry, a 22-year-old bisexual woman, who was beaten by almost every member of her natal family:

[My] brother beat me because I was going out with a girl and stuff ... I was so much older than him and nobody was there say anything to him ... Everyone was standing there watching ... sister also beat [me] and called me ugly, disgusting and a prostitute ... [My] father threw a knife at me when I disobeyed him. That is when [I] realised that my dad can kill, literally can kill me.¹⁷

Some lesbians and bisexual women entered heterosexual marriage to escape violence in the natal home ... [but] violence also took place in the marital home.

Joan's uncle's family used her non-heteronormative gender expression and her relationship with her female partner to threaten, blackmail and cheat Joan out of family property. The uncle's family threw Joan and her partner out on the street with their luggage and forced them to sign papers, deeding their property to the uncle.¹⁸ Furthermore, Joan's partner's family would repeatedly restrict her and her partner's movements, refusing to let Joan's partner leave the house to visit Joan, or beating Joan and throwing her out when she came to visit her partner. They would verbally abuse her, saying, "She has nothing to do with our family, neither is she related to any of us, why do you people let her in the house? Get her out of here."¹⁹

Some lesbians and bisexual women entered heterosexual marriage to escape violence in the natal home. Some married because they were under pressure to comply with family expectations to marry (a man) and could not imagine a way out of this.²⁰ Either way, the heterosexual marriages produced disastrous

results. Violence also took place in the marital home. All the lesbian and bisexual respondents who had been forced to marry experienced severe physical and sexual violence from their husbands.

Sherry, a 22-year-old bisexual woman in Lahore who had been forced to marry by her family said her reluctance to have sex with her husband led him to "beat the shit out of" her.

Shaheen, a lesbian in Karachi, endured an abusive marriage for nearly a year at the age of 20 after her family pressured her into marriage. She told us, "Everyday I went through all kinds of physical, sexual, verbal abuse;²¹ it was not just a matter of duty." For Shaheen, enduring the marriage for as long as she did was certainly in part due to fear, but she also felt it was a test for herself to see if she could, in fact, be in a marriage to fulfill her sense of duty to her family.

... the family is unregulated and often holds almost absolute control over the individual.

When she found that she could not, she still had to wait for "an out" in the form of a visible manifestation of the violence she had been experiencing:

I told my parents after 10 months. I hadn't [told them], the whole time that I was there. But something happened which was, I had a bruise on my face for the first time, otherwise he was very careful, my whole body was bruised, but my face was [not]... So it was, probably I needed a reason and excuse to say it. And I knew within myself that I had, in a manner of speaking, tested myself in the marriage enough. And in that case I knew that this was it and I had an out.²²

As we can see, most of the female-bodied people, whether lesbian, bisexual or transgender, experienced physical violence primarily within the

17 Sherry, bisexual. O Pakistan, Lahore, 2010.

18 Joan, lesbian/transgender man. O Pakistan, Lahore, 2011.

19 Joan, lesbian/transgender man. O Pakistan, Lahore, 2011.

20 Sherry, bisexual. O Pakistan, Lahore, 2010.

21 Shaheen, lesbian. O Pakistan, Karachi, 2011.

22 Shaheen, lesbian. O Pakistan, Karachi, 2011.

private sphere. This is similar to the experience of heterosexual cisgender women in Pakistan.

As for violence in the public sphere, transgender men and lesbians with a masculine gender presentation reported experiencing verbal harassment. They rarely reported physical violence in public. Those who did report it spoke about unwanted sexual touching in public spaces.

Khawajasaras, on the other hand, reported that most of the violence they experienced occurred in the public sphere, often on the streets during the course of their work, such as *toli* (begging), street dancing and/or sex work. They reported a great deal of verbal ridicule and verbal abuse, which frequently led to physical and sexual violence.

Amber, a khwajasara in Karachi, reported that some men on the street threw banana peels, and yelled abusive words and humiliating jokes at her. She also reported, “[Men on the street] would beat us, undress us, or snatch our purses.”²³ Violence on the streets was compounded by police complicity. Amber identified police officers as among those who perpetrated different kinds of violence against khwajasaras:

They [the police] beat us ... with sticks, slap us and kick us. When we saw them coming from a distance, we hide.... Yes, then they catch us. They don't say anything to us then, but take money from the other party. They do pimping for us as well ... they take money from us. They say ok there would be a car coming, sit in it and then we will catch you red-handed. They charge them money and don't even give us our share.²⁴

In 2010, a group of 20 or so khwajasaras celebrating a *salgirah* (a ceremonial birthday celebration) were arrested at their party. The police raided the occasion based on unspecified reports that drugs and alcohol were being consumed behind closed doors. The police arrested most of the people at the party

including the individual (Amir) for whom the celebration had been arranged. While the police were transporting them, Amir, in fear of police reprisal, jumped off the police van in an attempt to escape. The other people present in the van allege that police shot at Amir and this caused his death. However, the police allege that Amir jumped off the van and hit his head, which caused his death. There was no autopsy to determine the actual cause of death.²⁵

In another instance, the police arrested an entire party of people under an allegation that a man and a khwajasara named Rani were getting married. The people arrested claimed they were having a ceremonial gathering for Rani while the police claimed a marriage was taking place.²⁶

Sexual Violence

The people we spoke to had suffered sexual violence ranging from sexual and lewd comments, unwanted touching and grabbing, to sexual molestation and rape.

Sexual violence was the most sensitive and difficult form of violence for our respondents to talk about and most of the time the interviewees either tried to avoid the topic altogether or provided minimum amount of detail about the incident.

That said, not a great deal of variation was reported between the LBT people we interviewed. In almost all cases, the perpetrators were non-State actors who acted in private spaces, like homes. Almost all respondents who told us they had been subject to sexual violence reported that they knew the perpetrators. It is also important to note that, for our respondents, sexual violence did not occur in isolation as all of them reported some form of physical or

23 Amber, khwajasara. O Pakistan, Lahore, 2011.

24 Amber, khwajasara. O Pakistan, Lahore, 2011.

25 Rameez Khan, “Eunuch killed: ‘He died from bullets, not head injury,’” *Express Tribune*, November 27, 2010, <http://tribune.com.pk/story/82408/eunuch-killed-he-died-from-bullets-not-head-injury/>

26 Sarah Suhail, “Hijras, Marriage and the Law,” *Chay Magazine*, July 1, 2010, <http://chaymagazine.org/2010-queer-jun/254-Hijras-marriage-and-the-law>

emotional violence either as part of the sexual assault or as separate incidents. Thus, sexual violence was always part of a larger campaign of abuse and degradation. In comparison with other forms of violence it seemed less prevalent, however, we cannot be certain whether this is because it is actually less prevalent or because it was reluctantly reported.

Some respondents felt that sexual harassment was linked to negative stereotypes about LBT individuals. Sherry, a 22-year-old bisexual woman from Lahore, told us:

A couple of guys added me [on a social networking site] and started chatting and stuff, and sending me links of their private parts or whatever ... because most of the people think that bisexuals and lesbians are sort of whores.²⁷

Other interviewees see the sexual harassment of LBT women as an extension of the harassment all women in Pakistan face. Natasha, a lesbian whose experiences of homophobia in Pakistan led her to move to Canada, reported:

Well, in Pakistan on the streets, I guess there's some amount of harassment, being pinched, being touched ... [These are] common forms of sexual assault that most women in Pakistan face.²⁸

A few interviewees reported that they were sexually molested during childhood by someone they knew, such as a male servant or a male relative. All had been violated more than once, some said the childhood sexual abuse continued for several years, and in some cases it lasted for as long as six years. The interviewees were reluctant to reveal the violations to family members because they feared both the perpetrator and their families, who could potentially chastise them, hit them or hold them responsible for the abuse. As Zuleikha, a 22-year-old bisexual woman in Lahore said, "I

was scared that my mother will scold me or hit me or something like that."²⁹

Umer, a transgender man, reported that another man threatened him with rape after Umer started dating the man's former girlfriend.³⁰ He also reported that his girlfriend's sister suggested to his mother that "maybe I [Umer] should be raped, in order to convert me."³¹

Ghazala, a bisexual woman who was raped by her stepfather for seven years from the age of sixteen, reported:

He raped me ... and then I decided that I am no longer going to stay there [at home], because nobody was ready to listen [to] me. When I tried to tell my mother, my uncle, my family, they didn't accept. Even they were not ready to take it seriously. They thought I am lying.³²

Patricia, who was raped repeatedly in the home, recounted:

Obviously I was shocked, scared and hurt. Basically I felt insecure and felt like an object. I thought don't I have a choice, opinion or permission and the right of owning my own body? Was it because of my physical weakness? Basically, I felt that if someone is physically strong, does that give him any right to take advantage at those who are physically weaker than you? It's wrong ... I verbally abused myself that why I was physically weak and couldn't stop that incident to happen.³³

27 Sherry, bisexual. O Pakistan, Lahore, 2010.

28 Natasha, lesbian. O Pakistan, Canada (via Skype), 2011.

29 Zuleikha, bisexual. O Pakistan, Lahore, 2011.

30 Umer, transgender man. O Pakistan, Karachi, 2011.

31 Umer, transgender man. O Pakistan, Karachi, 2011.

32 Ghazala, bisexual. O Pakistan, Lahore, 2011.

33 Patricia, pansexual. O Pakistan, Lahore, 2010.

MONICA³⁴

Monica is a 22-year-old self-identified khwajasara who lives in Lahore. She was born male, identifies as a woman, and calls herself gay to express her romantic and sexual interest in men. She lives in an impoverished area of Lahore in a rented apartment, away from her natal family. Unlike most khwajasaras, Monica is educated – she was a bright student and studied till matriculation (10th grade board exams). She earns her living by dancing at parties and through sex work. At the time of the interview she was not in a romantic relationship but keenly mentioned her male ex-partner who she used to love a lot. She did not mention her monthly income but reported living independently in a rented house, bearing all her expenses as well as supporting her family.

As a student, although she was different from her classmates, she reported that her peers or teachers never discriminated against her. When she was 15 years old people around her made her realise that she was either gay or a khwajasara. She gradually accepted this and came out to her parents and four siblings. They disregarded her assertion and went into denial, trying to convince her that it was abnormal and wrong to be gay. She believes that this rejection was due to the pressure her close family was facing from relatives as well as from society at large.

She said, initially, it was very difficult for her to deal with her family's attitudes, but eventually she managed. "I have Jutt³⁵ blood in my veins," she says, "so it wasn't easy to break my spirit." She reported that in the beginning her mother and then later her Guru, whom she kept referring to as "my owner," were a great support to her.

Monica suffered emotional violence from relatives and extended family, who cursed her and prayed that God would damn her. The relatives pressured her mother to stop Monica from being khwajasara and resume the "proper" life of a cisgender man. Monica felt stressed and depressed but she never lost hope and continued to resist. Eventually her mother started

supporting her, especially after Monica began to earn money and helped support the family financially.

Monica also experienced a great deal of discrimination in the public sphere. She cannot travel in buses because of the gender segregated compartments. "When I enter the women's section they say I am not a woman so I should leave and when I move to men's section, they joke and asked me to leave also. So, there's no space for me in local buses." In this situation, she has to commute via a rickshaw (three wheeler private vehicle), which is more expensive and a financial burden.

Every visit to a doctor is an ordeal. "I can't go to any government hospital because the doctors as well as the patients think what is this strange thing doing here? I receive loaded comments, gestures, and at times curses. So, I am only left with the option of consulting a private doctor or clinic. [Choosing a private doctor or clinic may mean less discriminatory treatment.] But it is more expensive."

Most of her experiences with violence in the public sphere involved sexual and physical abuse. Monica is harassed on the street daily, subjected to lewd comments, derogatory jokes, unwanted touching and grabbing by strangers. She used to feel afraid, sad and angry about it. Now, she has accepted it as something she cannot avoid. Monica reported that she was gang raped by a group of drunken men during a party for which she was hired as a dancer. She had gone to the party with her Guru and other khwajasaras. Monica said no one stopped the perpetrators, not even her Guru, which was shocking for Monica. After the rape, she felt helpless, extremely angry and sad. When she confronted her Guru about not standing up for her, she was told that it's quite normal and usual to get raped by men in such parties. It took Monica a long time to get over that horrible experience. She said she developed resentment for her Guru after the incident. Her fellow khwajasara friends did extend their emotional support to her. She said, "Now, I try to protect myself as well as my khwajasara friends, and if someone tries to rape or molest my friends, I offer myself to [the people who want to rape my friends] and ask them to leave [my friends]."

34 Monica, khwajasara. O Pakistan, Lahore, 2011.

35 Jutt is a caste name and they are culturally believed to be strong-willed and stubborn.



SHAHEEN³⁶

Shaheen is a 40-year-old lesbian who lives in Karachi. She has been married twice, both times to a man. At age 35, she entered into a relationship with a woman and now lives with her partner. She studied till A-levels (12th/13th grade) and was born and raised Muslim but no longer practices Islam. She did not want to disclose her profession but reported herself to be a high profile individual, earning 100,000 Pakistan rupees a month.

Shaheen self-identifies as a lesbian female. She came out to her friends, brothers and sisters-in-law when she entered into the lesbian relationship. Though her siblings and their wives supported her, her friends were not as forthcoming with their support. A gay male friend was annoyed at her coming out and proposed marriage to her, suggesting that they have children together so that no one would know they were gay. Shaheen felt his behavior was hurtful, but she coped with it. She says a lot of friends know she is a lesbian, but they don't talk about it and ignore it. A few of her friends withdrew from her after her coming out although she says part of this may be because she was so wrapped up in her new love that she did not attend to some of her other friendships.

Shaheen reported physical, emotional, verbal and sexual violence from non-state perpetrators. When she was five years old, her brother caught her fooling around with another girl and told her mother. Her mother threatened to burn Shaheen's genitals with an iron. At age six or seven, she was sexually molested by her best friend's father. The molestation continued until she was almost a teenager. The friend whose father abused Shaheen told Shaheen that she should be ashamed and feel guilt because she was the one who compelled her father to do this to her. The abuse stopped when Shaheen told her mother, who made sure the perpetrator never came close to her again.

When she turned 12, Shaheen's movements and mobility were restricted and monitored. Her family was very religious and conservative, and Shaheen reported that all her life she felt an unsaid societal pressure to

conform to the norm, unable to live her life the way she wanted.

Her first husband abused and violated her physically, emotionally and sexually on a daily basis. She was 20 years old at the time. Those experiences were so painful to recall that she straightforwardly, said, "I don't want to go into detail but I have been violated by him on physical, sexual and emotional level." However, she categorically denied that the violence was because of her sexual orientation and attributed it to his being a sadistic man.

In July 2011, the US Embassy in Islamabad held an LGBT pride celebration which was publicised in a press release on the Embassy's website.³⁷ The publicity led to a huge outcry from religious conservatives and political parties in Pakistan. Shaheen's name was on the guest list. She feared it would be released, leaving her open to violence and rape from conservative religious protestors. Shaheen finds the situation in Pakistan untenable in the long run and would like to live abroad where she can walk down the street holding her partner's hand and not worry for her life. Even though she has friends, brothers and sisters-in-law who have been supportive, she wants to live her life the way she always wanted to, openly and without hiding it from anyone.

36 Shaheen, lesbian. O Pakistan, Karachi, 2011.

37 "US Embassy In Islamabad Accused Of 'Cultural Terrorism' For Holding Gay Rights Event," *Fridae*, July 4, 2011, <http://www.fridae.asia/newsfeatures/2011/07/04/10982.us-embassy-in-islamabad-accused-of-cultural-terrorism-for-hosting-gay-rights-event>. Peter J. Smith, "Pakistanis Denounce US Embassy's Gay Rights Party as 'Cultural Terrorism,'" *Life Site News*, July 26, 2011, <http://www.lifesitenews.com/news/pakistanis-denounce-us-embassys-gay-rights-party-as-cultural-terrorism/>.

IMPACT OF VIOLENCE AND COPING METHODS

Given the harsh policing of gender norms, the ability to imagine life as a person with non-conforming sexual orientation, gender identity or gender expression was severely limited for our respondents, which contributed to low morale, depression, and desire to leave the country.

LBT interviewees, particularly lesbians, bisexual women, gender non-conforming women (butch lesbians), and transgender men, said that having their activities, their non-conforming gender expression and behaviour routinely controlled and policed by family members created severe mental, physical and emotional distress. Similar impact was reported when individuals were ostracised by their natal families.

In most of the adult rape cases, where respondents told their families about the sexual violence, they did not get much support from their family and had to cope with the trauma on their own. Many of them said that they internalised the trauma (blamed themselves, blamed their sexual orientation or non-conforming gender).

Coping with violence occurred in different ways. Amber, a khwajasara who had been physically and sexually assaulted by strangers on the street as well as police officers, laughed when recounting her experiences, leading us to conclude that normalising the violence (downplaying, ignoring and “accepting” the violence) was a way of coping. Amber said that the violence, harassment and public humiliation was “part of the package of being in this field.”³⁸

Fauzia, a bisexual woman in Lahore who had to deal with being groped in public places said, “Obviously it [unwanted touching] was very offensive and very disturbing. So, I turned around and hit the person, and lots of people gathered

and it was like, couple of times this happened.”³⁹

Ghazala, a bisexual woman, who had experienced a lot of physical violence from family members, including child sexual abuse, said that she was determined to prevent others from being abused the way she was. “My cousin was going through the same problem ... I sat down with them and explained them everything in good detail and told them if they get even the slightest hint of sexual gestures, they should inform me immediately ... so one cousin shared it with me that he [the stepfather] tried forcing her as well, [and] I fought for her in the family.”⁴⁰

Some of the LBT individuals survived family and marital violence by creating alternative systems of support among their friends. In some cases, they turned to extended family members who accepted their sexual orientation, gender identity or gender expression.

... the majority of the respondents ... were trying to make a life in Pakistan in the face of adversity.

Some of our respondents aspire to leave Pakistan. Maryam wants to leave the country and go somewhere where she “can actually be me.”⁴¹ Shaheen said that on a trip abroad she was holding her partner’s hand and playing with her partner’s hair and “It was perfectly okay. I understand that it’s not okay everywhere. But it’s not a crime, you know. I want that.”⁴²

In reality, the majority of the respondents did not have this option or the opportunity to leave the country to escape violence and the social environment. Most were trying to make a life in Pakistan in the face of adversity.

38 Amber, khwajasara. O Pakistan, Lahore, 2011.

39 Fauzia, bisexual. O Pakistan, Lahore, 2011.

40 Ghazala, bisexual. O Pakistan, Lahore, 2011.

41 Maryam, lesbian. O Pakistan, Islamabad, 2011.

42 Shaheen, lesbian. O Pakistan, Karachi, 2011.

LAWS AFFECTING LBT PEOPLE

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 shall not be less than two years nor more than ten years, and shall also be liable to fine.⁴³

Section 377 of the Pakistan Penal Code

criminalises “carnal intercourse against the order of nature,” which the State interprets primarily as anal sex and bestiality. This law was formed in British colonial times and mirrors similar laws in India and Bangladesh, among other former British colonies.

No legal reform can take hold until the institution of the family is ready to accept change.

In Pakistan as with most countries that have similar British colonial laws, Section 377 is never used against heterosexual people, and instead disproportionately targets people in same-sex relationships. Famously, the courts attempted to use this law against Shumaile Raj and Shahzina Tariq, a transgender man and cisgender woman who were married to each other.⁴⁴ Because 377 requires proof of penetration, however, the charge had to be withdrawn. It is, however, rarely used even against homosexuals and transgender people, as cases rarely reach court. Instead, it is an ever-present ideological and physical threat in the lives of all LGBT individuals, particularly those whose livelihood comes from the street, where it forms part of the arsenal for police harassment of sex workers and beggars, be they homosexual or transgender.

43 Section 377, Pakistan Penal Code, <http://www.pakistan.org/pakistan/legislation/1860/actXLVof1860.html>.

44 Sarah Suhail. The Medico-Legal Policing of Gender Identity in Pakistan: A Case Study. Unpublished.

Through law and legal institutions, the state regulates gender, enforces heteronormativity, and gives legal weight to social norms, traditions and cultural practises that stigmatise and marginalise same-sex relationships and gender non-conforming individuals.

Current law includes British colonial legislation that has been adopted wholesale by Pakistan as a part of the Pakistan Penal Code. In addition to 377, there is Section 294, which regulates “obscene dance and songs”, and Section 295, an anti-blasphemy law, both of which make LBT people vulnerable to police abuses; Section 295 provides opportunity for community violence (such as individual vigilante attacks or mob violence) in the name of religion. In the 1980s, under then President Zia-ul-Haq’s campaign of Islamization, further criminal offences were put in place, in addition to discriminatory colonial laws called the Hudood ordinances.⁴⁵ Among the provisions of the Hudood Ordinance was the requirement of four witnesses to a rape, without which the victim of rape could be convicted of fornication and jailed.⁴⁶ In 2006, the Hudood Ordinance was amended (see below Women’s Protection Bill).

All of these laws help to legitimise the use of religious rhetoric to justify abuse and discrimination by the Pakistani state. This is further reflected in the **Objectives Resolution**⁴⁷ and the **incorporation of Article 227**⁴⁸ of the

45 <http://www.pakistan.org/pakistan/legislation/hudood.html>

46 The Offense of Zina (Enforcement of Hudood) Ordinance, 1979. http://www.pakistan.org/pakistan/legislation/zia_po_1979/ord7_1979.html Retrieved January 28, 2013. The Protection of Women (Criminal Laws Amendment) Act, 2006,

47 The Objectives Resolution, annexed to the Constitution, begins, “Whereas sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the State of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust.” That is to say, the Objectives Resolution declares Allah sovereign of Pakistan.” http://www.pakistan.org/pakistan/constitution/annex_objres.html

48 Article 227(1), The Constitution of the Islamic Republic of Pakistan. “All existing laws shall be brought in conformity with the

constitution, which stipulates that all law must be brought in conformity with the Qur'an and Sunnah (practices of the Prophet Muhammad).

The **Women's Protection Bill** was instituted in 2006 amending the Hudood Ordinance in a number of ways: firstly it took out Zina-bil-jabr (rape as a *hadd* offence that garnered the highest possible punishment) and placed it within the purview of the Pakistan Penal Code as the offence of rape. Secondly, any complaint regarding rape could not be converted to a charge of fornication under the new law. Thirdly, a number of other offences like kidnapping, abducting or inducing women for marriage, kidnapping or abducting for purposes of rape, and selling people for the purposes of prostitution, were moved into the Penal code. These changes gave judges the authority to try cases under criminal rather than Islamic law.

In 2010, **The Protection Against Harassment of Women at the Workplace Act** was signed into law. This legislation put in place a complaints mechanism for sexual harassment in the workplace. The mechanism has not been tested for sexual harassment on the grounds of sexual orientation, gender identity or gender expression. To do so would likely incur greater harassment and recriminations for people who are already at risk legally and socially for being non-conforming.

Because by and large the state fails to protect the rights of LBT individuals who have been subject to violence or discrimination, the family becomes the only institution to which individuals must turn time and again in times of need. However, the family is unregulated and often holds almost absolute control over the individual. There are no state institutions, such as LBT-friendly shelters, which could support an LBT individual if he/she chose to break away from his or her family of origin.

Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions." <http://www.pakistani.org/pakistan/constitution/part9.html>.

RECOMMENDATIONS

It is evident from our interviews that LBT people in Pakistan are caught in a complex situation that depends on many factors. The government of Pakistan does not provide many positive and protective laws, and our respondents do not see state institutions as a source of current or future support. Even though some respondents suggest that laws should be put in place to protect LBT people, most do not believe that the state will do anything at all to help them.

In many countries and for many movements, an appeal to the legislators is usually the first step to bringing about positive change. In Pakistan, however, this is not necessarily the case and in fact might prove detrimental. There is very little unity or even visibility among LGBT groups, or among LGBT individuals of different class backgrounds and regions of Pakistan. Thus, there is no consolidated movement for the protection of LGBT rights and no strong base of people coming together to call for public discussion on LGBT rights or withstanding the backlash. Lesbians and bisexual women are also scattered far and wide, and often hide even from each other.

In the case of khwajasaras, headway has been made with the Supreme Court's support of a petition brought by khwajasara activists. However, khwajasaras we talked to recommended strongly that the government should take legislative measures to protect khwajasaras in Pakistan from discrimination and violence so they can have the full human rights to which they are entitled.

No cases have been brought to the courts regarding lesbians or bisexual women, so legally speaking, the rights of lesbian and bisexual women have not been tested in the courts. They are not yet in the official notice of the courts or the legislature.

Our first recommendation, then, is for mainstream human rights and women's rights groups to extend support to local movements in any way that the local movement needs. This would mean different things for the different communities who make up the LBT population and would require a separate investigation into what each group needs. Civil society organizations that work on issues of sexuality require LBT-sensitive support. Extending such support to these organizations would go a long way in supporting the movement for LBT rights.

Secondly, we recommend that concerned funders and international human rights organizations support, facilitate, participate in, and provide fora for LBT people to come together and organise support for LBT issues and rights. The main focus of these fora should be consolidating LBT activism at the grassroots level so that the communities can come together and decide for themselves what the next steps will be.

Thirdly, given levels of physical and sexual violence, we recommend that LBT and gay men's groups liaise with women's and queer organizations to set up hotlines and safe houses for LBT people who might need them when they are experiencing violence.

Fourthly, we recommend training and education programs for existing women's shelters to sensitise them about the needs of lesbians and bisexual women, and foster greater tolerance among the residents and management of such shelters to the needs of lesbians and bisexual women. Furthermore, women's rights and human rights organizations in general should be aware of the issues that LBT people face and educate themselves about the aspirations and difficulties of non-heteronormative people.

Finally, we believe that the only way lasting change will come to Pakistani society is through Pakistanis themselves, and in our context, this means through the institution of the family. No legal reform can take hold until the institution of the family is ready to accept change. It is through the family that society at large must be sensitised about needs of LBT people. We recommend that Pakistani LBT activists, human rights defenders and allies foster long-term contact with organizations that work with families in order to slowly sensitise the organizations and the families they work with – providing leadership and intervening in the family structure to bring about changes in how LBT people are treated by their families.

APPENDIX A: GLOSSARY OF TERMS

Chela – the disciples of a Guru.

Dera – the home of the Guru in which all or most of her chelas will live with her.

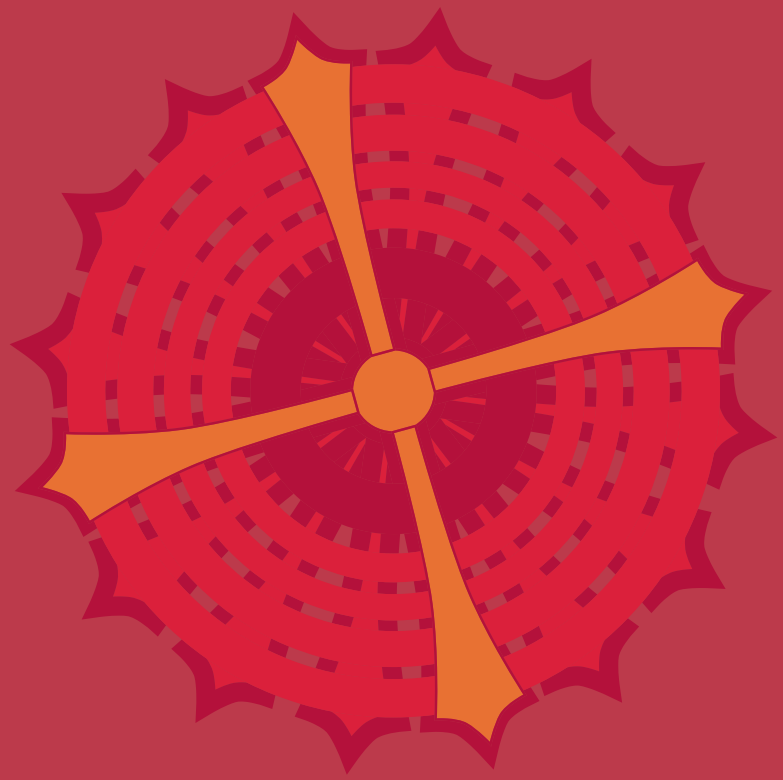
Extended family – uncles, aunts and cousins from either or both sides of the family.

Guru – the head of the khwajasara family. All the khwajasaras under her are her disciples and are often referred to as her daughters as well.

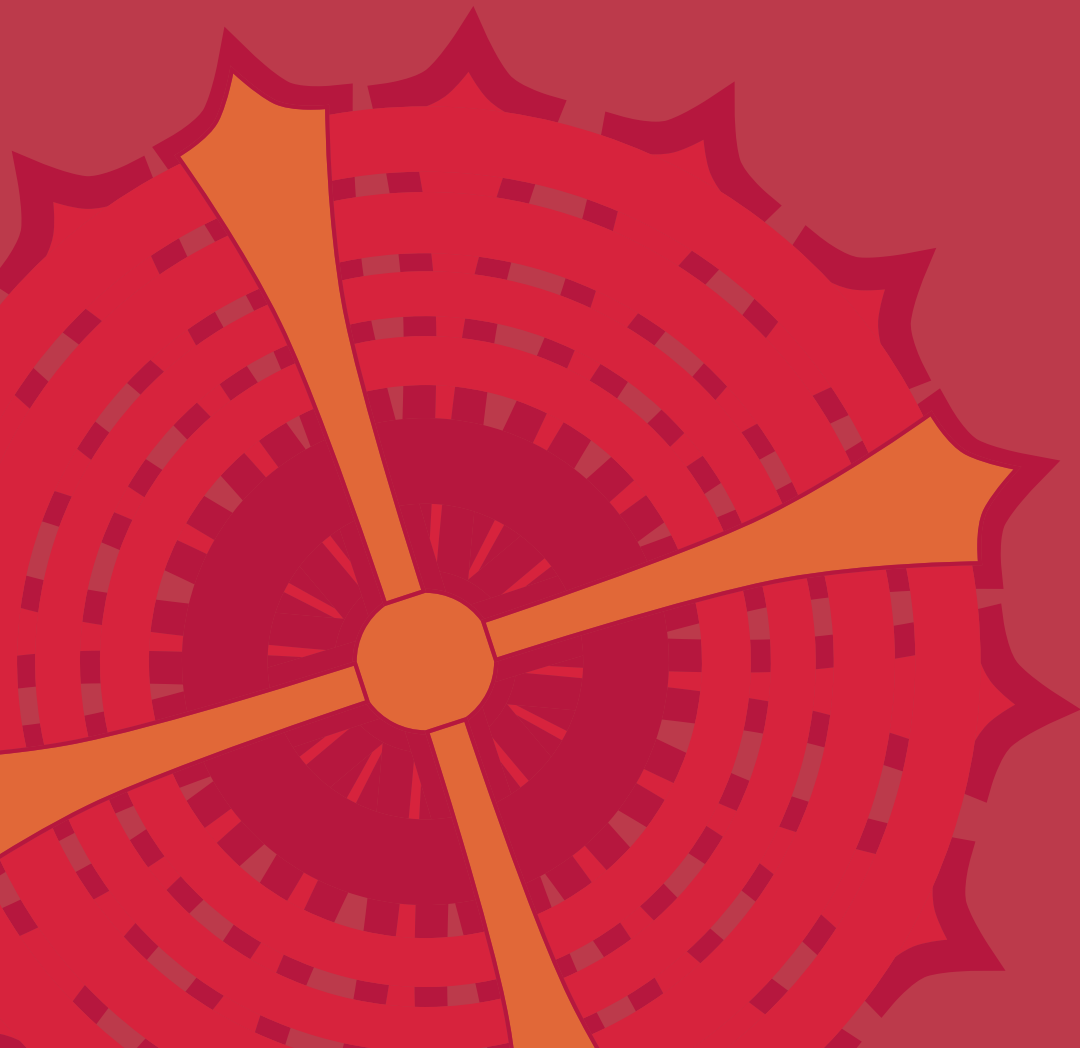
Joint family home – a residence in which multiple generations of a family live.

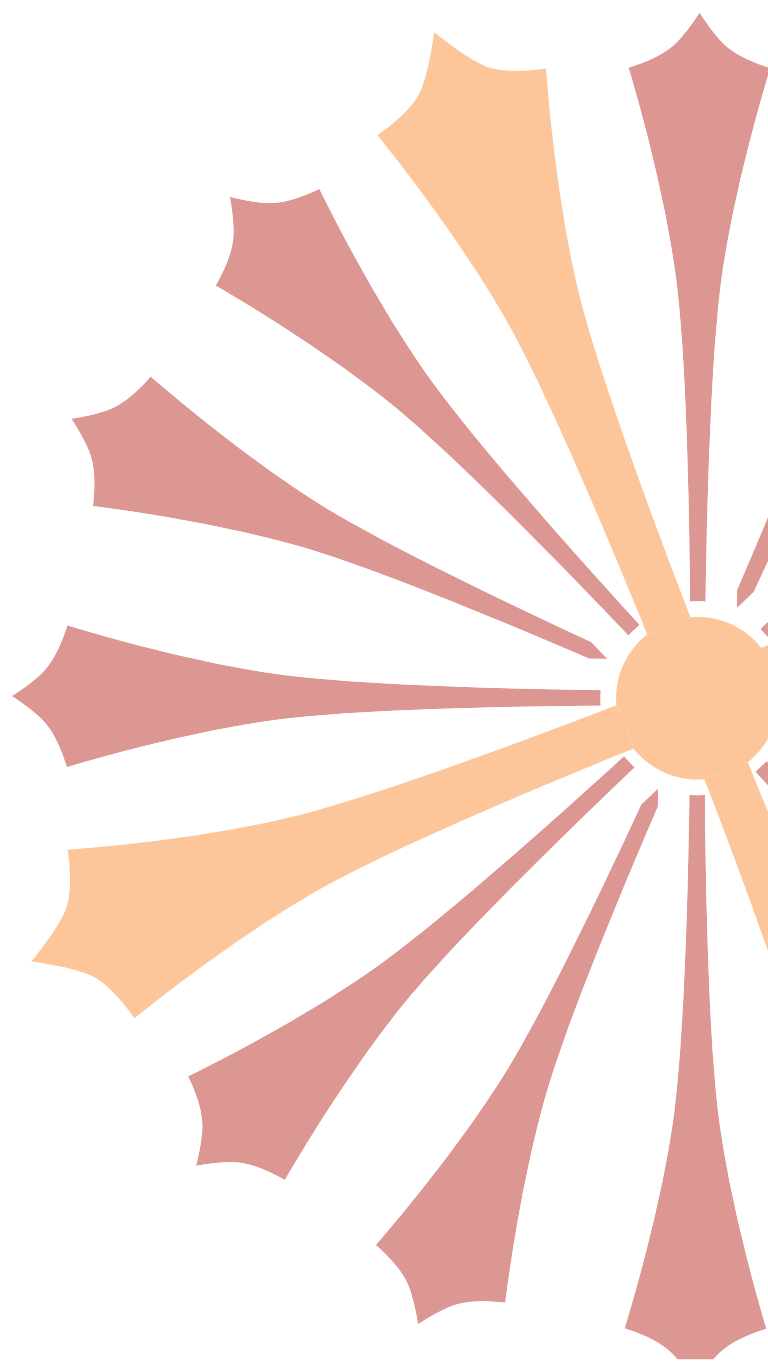
Khwajasara – a transgender person who may have been born male-bodied or, occasionally, intersex, but identifies as a woman or with feminine traits and joins the traditional community of the khwajasaras. Khwajasaras (also known as Hijras) have been a part of South Asian society for about 400 years. There are usually two types of khawajsaras in Pakistan, one castrated and one not. The latter group refer to themselves as zananas.

Toli – begging for money in exchange for blessings and prayers. One of the traditional activities of khawjasara communities.



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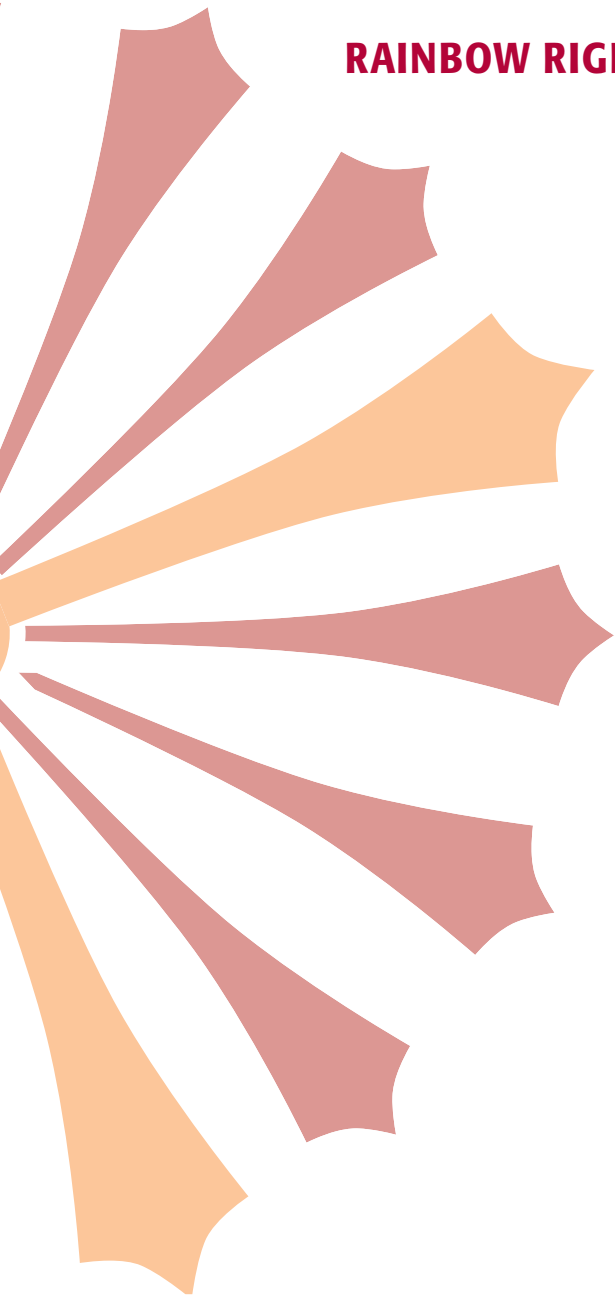




KWENTONG BEBOT

Lived Experiences of Lesbians, Bisexual
and Transgender Women in the Philippines

RAINBOW RIGHTS PROJECT



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INTRODUCTION

The International Gay and Lesbian Human Rights Commission (IGLHRC) implemented a five-country research and documentation project on violence and discrimination against LBT people.¹ IGLHRC worked with the Rainbow Rights Project, the country team for the Philippines. This report offers preliminary insights based on the available research into how cultural contexts influence state policy towards LBT women.

¹ The four other countries (and country-specific organizations) involved in this project are: Japan (Gay Japan News); Malaysia (KRYSS); Sri Lanka (Women's Support Group); and Pakistan (O).

There is an oft-repeated belief among people outside of the Philippines² that the country enjoys a high level of acceptance of lesbian, gay, bisexual and transgender (LGBT) people, a conclusion that University of the Philippines Professor, Neil Garcia, says is “sadly misinformed.”³

A study⁴ analyzing data from the 2002 Young Adults Fertility and Sexuality Survey (YAFS3), which involved around 19,000 young adults aged 15-27, suggests an explanation for the impression that being LGBT is accepted in the Philippines. According to the YAFS3 study, more than half of the respondents expressed “homosexual acceptance” but only 13.5% approved of both the person and the homosexual acts, meaning more than half agreed that people had the right to be homosexual even if most of them disapproved of people having same sex relations. This seemingly contradictory finding of the YAFS3 may be explained by the fact that although the majority of Filipinos are baptized Roman Catholics, and while the Vatican itself does not condone the social acceptance of homosexuality and same-sex relationships,⁵ there is a more tolerant attitude towards and a greater level of acceptance of LGBT people among Filipino families and within local-level government institutions.

In addition, the State does not gather such data, which results in LGBT human rights issues being excluded in policy-making. This was borne out by our research where the lesbians, bisexual women and transgender (LBT) women⁶ we interviewed

² “LGBT Culture in the Philippines,” Wikipedia, accessed on February 16, 2013, http://en.wikipedia.org/wiki/LGBT_culture_in_the_Philippines.

³ Neil Garcia, “Male Homosexuality in the Philippines: a short history,” International Institute for Asian Studies Newsletter, accessed on February 16, 2013, http://www.ias.nl/nl/35/IIAS_NL35_13.pdf,

⁴ Christian Joy Cruz and Russel Brian Mallari, “Revisiting Social Acceptance of Homosexuality Among Filipino Youth: Some Theoretical and Methodological Implications,” *Philippine Population Review* (2007): 46, 67-68.

⁵ “Homosexuality,” Catholic Answers website, accessed February 13, 2013, <http://www.catholic.com/tracts/homosexuality>.

⁶ Transgender men were not part of the Philippines study. See

testified to a significant level of institutional invisibility and devaluation. They reported that their attempts to lodge complaints and seek redress for violence and discrimination have often been hindered by a lack of understanding and acceptance among authorities, particularly at the lower end of the justice system, (such as law enforcers) which also reflects the lack of available substantive data on levels of discrimination and violence based on sexual orientation, gender identity and gender expression.

INTERVIEWEE DEMOGRAPHICS

The Rainbow Rights Project Philippines conducted data-gathering interviews with LBT women from March 2011 to February 2012. As well as taking into account ethical considerations, a key component of data collection was ensuring both balanced demographic representation of LBT women and geographical representation from the three main island groups in the Philippines: Luzon, Visayas and Mindanao.

The majority of the 59 interviews involved transgender women (58%), followed by lesbians (29%) and bisexual women (9%). Easy access to the network of transgender women combined with their receptiveness to the call for interviews led to more transgender women being interviewed. A maximum number of interviews per group were not set, which might have affected the final distribution of the interviews. The small proportion of interviews with bisexual women can perhaps be attributed to them being less visible in the Philippines. In relation to geographic representation, 59% of the LBT individuals interviewed came from Luzon, 34% from the Visayas, and 7% from Mindanao, the latter having less representation due to geographic and financial constraints.

Three interviews were excluded from the overall LBT pool – one with a transgender male, one with a person who identified as male, and an interview conducted with a group of three lesbians. These interviews did not comply with the parameters of our study. In addition, the Philippines country team did not want to offend the sensibilities of transgender males, hence the interview with the transgender man was conducted but not included in the analysis of data from the pool of women-identified respondents. A group interview conducted with three lesbians from Mindanao was subsequently not included in this report. Interviews were also held with a range of relevant stakeholders in order to identify

1. Service level and interventions for LBT women
2. Prevalent attitudes and knowledge level on relevant LBT women's issues
3. Existing laws and policies related to sexual orientation, gender identity and gender expression.

PHILIPPINES

LOCATIONS OF LBT INDIVIDUALS INTERVIEWED



explanation in demographics section of this chapter.

A balanced approach was taken in these interviews to ensure a fair representation of stakeholders from different sectors, including civil society, government agencies, and medical and health providers from throughout the three island groups. More than 25% of the 46 stakeholder interviews involved representatives from civil society, which included LGBT organizations, women groups, human rights NGOs and reproductive health advocates; 15% involved State sector representatives, including those from the legislative branch, national government agencies, human rights organizations and the state university. Medical and health providers comprised almost 20% of the stakeholders interviewed and included psychiatrists, doctors, nurses and guidance counselors. About 39% of the stakeholders interviewed were drawn from a miscellaneous group that included educators, religious leaders, employers and people working in the media.

COUNTRY CONTEXT

The Philippines is a vibrant and culturally diverse archipelago comprised of 7,107 islands that are home to 92 million people with more than 170 languages. The nation derives its names from King Philip II of Spain, having been declared a Spanish colony – “Las Islas Filipinas” – in the mid-16th century. Spanish rule lasted for 333 years until Filipinos waged a revolution for national independence in 1898. The United States colonized the islands during the Spanish-American War and after a war between the new native government and the US.

In 1935, the US granted the Philippines the status of self-governing commonwealth, which stood for seven years until 1942 during the Second World War when the nation fell under Japanese control. The US granted the Philippines full independence in 1946.

As a multiparty, constitutional republic, the Philippines became a model of democracy in Asia, experiencing a relatively peaceful transition through successive presidents. In 1965 Ferdinand Marcos was elected President and served two constitutionally

mandated terms in office. In 1972, barred from seeking a third term, he declared martial law and enacted a new constitution that enabled him to stay in power indefinitely, heralding the dawn of an era of political persecutions, repression and myriad human rights violations. In the People Power Revolution of 1986, civil resistance to his rule succeeded in ousting him from power.

A second People Power Revolution in 2001 replaced President Joseph Estrada with his Vice-President, Gloria Macapagal-Arroyo. Her nine years in office was dogged by claims of graft, corruption and human rights violations. In 2011 she was charged with crimes, including electoral sabotage, for which she still awaits trial at the time of writing. Current President Benigno Aquino III came to power in 2010 with a campaign pledge of upholding of human rights. However, to date, the impunity of security forces persists, as do extrajudicial killings, torture and abuse by security forces, disappearances, warrantless arrests, violence against women, the abuse and sexual exploitation of children, child labor and trafficking in persons.⁷ Discrimination, violence and hate crimes targeting LGBT people are widely reported, and are exacerbated by the absence of relevant legal protections and means of redress.⁸

The Philippines has both signed and ratified⁹ a number of United Nations (UN) human rights covenants, treaties and optional protocols, many of which have been integrated into national and municipal laws. These conventions include the Convention on the Elimination of All Forms of

7 “2011 Human Rights reports: Philippines,” US Department of State, accessed February 12, 2012, <http://www.state.gov/j/drl/rls/hrrpt/2011/eap/186301.htm>.

8 “The Status of Lesbian, Gay, Bisexual, and Transgender Rights in the Philippines Submission to the Human Rights Council for Universal Periodic Review 13th Session,” Rainbow Rights Project Inc. and Philippine LGBT Hate Crime Watch, accessed February 12, 2013, http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS1_UPR_PHL_S13_2012_JointSubmission1_E.pdf.

9 “Report Status by Country,” UN Treaty Body Database, accessed October 30, 2012, <http://www.unhchr.ch/tbs/doc.nsf/NewhvVAILSPRByCountry?OpenView>.

Discrimination Against Women (CEDAW).¹⁰ The government has established institutions to deal with human rights, and is claiming to base its programming, budgeting, and planning on human rights.¹¹

However, civil society organizations (CSOs) maintain that while the State is diligently submitting glowing reports to international bodies on the Philippines' compliance with human rights standards, it is actively covering up the persistence of human rights violations.¹² The government boasts of a robust structural framework of human rights mechanisms, including¹³ monitoring and complaints mechanisms, inter-agency task forces, engagement with civil society via human rights desks, and the implementation of preventive policies in response to the reports of human rights violations filed during the administration of President Arroyo.¹⁴ However, CSOs have noted that this is merely window dressing and that the government does not provide adequate human rights protections.¹⁵ Several factors complicate the general human rights situation in the Philippines.

The State is waging a counter-insurgency war against the Maoist New People's Army and armed

fundamentalist groups.¹⁶ **These military operations form the backdrop to many human rights violations against legal organizations perceived to be fronts for armed opposition movements.**¹⁷

Economic policies favor substantial investments in mining, biofuel farms, and real estate, thereby contributing to forced dispossession of land and extrajudicial killings particularly in rural areas.¹⁸

The pervasive and repressive religious environment and Roman Catholic majority in the Philippines ... often disenfranchises already vulnerable sectors of the population, including LGBT people.

In 2012 the reported death toll of environmental activists totaled 15.¹⁹ Gender equality is enshrined in the Constitution and forms the basis of legislation and national development plans.²⁰ The Philippines scores relatively high on global gender equality indices and ranks eighth overall in the World Economic Forum's 2012 Global Gender Gap Report, which posits the Philippines as the leading country for gender equality in the Asia region.²¹ However, such indices mask the persistence of discrimination and inequality that women in the Philippines continue to suffer in most aspects of their lives.

10 "Magna Carta of Women – a victory for women's human rights advocates," CEDAW in Action – Southeast Asia, accessed October 30, 2012, http://cedaw-seasia.org/philippines_action_MagnaCarta.html.

11 Commission on Human Rights of the Philippines website, accessed October 30, 2012, http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/pdf_files/abthr036.pdf

12 "Less killings, but government not doing enough – Karapatan," The PCJ Blog (blog), <http://pcij.org/blog/2007/12/10/less-killings-but-government-not-doing-enough-karapatan>.

13 List of Philippines UN human rights body communications, Office of the High Commissioner for Human Rights website, accessed October 30, 2012, <http://tb.ohchr.org/default.aspx?country=ph>.

14 "Human Rights in the Philippines: Government Response," Hurights Osaka, October 2012, <http://www.hurights.or.jp/archives/focus/section2/2010/03/human-rights-in-the-philippines-government-response.html#note03>.

15 "Ramento Project for Rights Defenders," Office of the High Commissioner for Human Rights website, accessed on October 30, 2012, http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/RPRD_UPR_PHL_S13_2012_RamentoProjectforRightsDefenders_E.pdf.

16 "World Report 2012: Philippines," Human Rights Watch, accessed February 13, 2013, <http://www.hrw.org/world-report-2012/world-report-2012-philippines>.

17 "Scared Silent," Human Rights Watch, June 28, 2007, accessed on October 30, 2012, <http://www.hrw.org/node/10922/section/2>.

18 "Groups blame Xstrata-SMI: 'Their blood are in your hands!'" Philippine Alliance of Human Rights Advocates website, October 25, 2012, accessed October 30, 2012, <http://www.philippinehumanrights.org/news/statements/236-groups-blame-xstrata-smi-their-blood-are-in-your-hands>.

19 RV Olea, "Philippines: Farmers, anti-mining activists killed before Human Rights Day," 2012, accessed February 13, 2013, <http://climate-connections.org/2012/12/10/farmers-anti-mining-activists-killed-before-human-rights-day/>.

20 "The Philippines," UN Women, accessed February 13, 2013, <http://www.unwomen-eseasia.org/docs/factsheets/07%20PHILIPPINES%20factsheet.pdf>.

21 "The Global Gender Gap Report," World Economic Forum, 2012, accessed February 13, 2013, <http://www.weforum.org/reports/global-gender-gap-report-2012>.

According to the United Nations Entity for Gender Equality and the Empowerment of Women, (UN Women) violence against women in the Philippines is high, attributed to deeply entrenched patriarchal attitudes and power imbalances within the family. The International Labor Organization reports that most women in the Philippines remain marginalized and disadvantaged in relation to employment.²² The Philippines is also a source country for trafficking in persons, with women subjected to sex trafficking, forced labor and involuntary servitude.²³

Although a professed secular state, the pervasive and repressive religious environment and Roman Catholic majority in the Philippines continue to hinder the progressive advancement of women's rights and negatively compound women's struggles in the country. Laws tend to closely adhere to a socially conservative agenda that mirrors Vatican policy, which often disenfranchises already vulnerable sectors of the population, including LGBT people. This is reflected in the current lack of legislation providing protection on the basis of sexual orientation, gender identity or gender expression. The Philippines is one of only two countries left in the world that does not allow divorce.²⁴

Consensual homosexual relations, homosexuality, and transgenderism are not illegal in the Philippines.²⁵ However, major government agencies, such as the military and public schools, are yet to formally articulate specific affirmative policies. For instance, gay men are allowed to serve in the military and teach in schools, on the condition

that they act "manly," do not cross dress, and do not discuss homosexuality.²⁶ Transgender male-to-female (MTF) women are required to be in male clothing during duty hours. No public statement is made about lesbian women in military service or training who prefer male clothing.

STATE ACTIONS

In 2013 the [Philippines] government did not join discussions on and chose to abstain from voting in support of a UN declaration calling for an end to extrajudicial killings based on sexual orientation.

A sampling of recent events illustrates the Philippine State's uneven approach to the rights of LGBT women. For the past 20 years, citizens have generally been free to organize groups and events aimed at discussing, defending, and promoting LGBT rights with little fear of repression or restrictions from the state. Cases of marked discrimination are rare at the state level but they can be controversial. The political party *Ang Ladlad* – a party comprised of and working for LGBT people formed in 2003 (then known as *AngLunduyan*) – was initially disqualified by the Philippine Commission on Elections (COMELEC) in 2010 on the basis of moral grounds. At that time, a commissioner labeled LGBT people as "immoral." COMELEC issued a statement in which it said that if accredited, the party would become a threat to youth, and would contravene the religious teachings of the Catholic church.²⁷

However, in a landmark decision that same year, the Supreme Court reversed the decision and allowed the party to contest elections. The decision was handed down amid a surge of support from the public and from the human rights community

22 "Gender Equality in the Philippines," International Labor Organization, accessed February 13, 2013, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_173283.pdf.

23 "The Philippines," UN Women, accessed February 13, 2013, <http://www.unwomen-eseasia.org/docs/factsheets/07%20PHILIPPINES%20factsheet.pdf>.

24 C Derichs and A Fleschenberg, eds., *Religious Fundamentalisms and Their Gendered Impacts* (2010), 25-26, accessed February 13, 2013, <http://library.fes.de/pdf-files/iez/07061.pdf>.

25 "Philippines Country Survey," International Lesbian, Gay Bisexual, Trans and Intersex Association, accessed October 30, 2012, <http://ilga.org/ilga/en/countries/PHILIPPINES/Law>.

26 "Philippine Military Academy says gays and lesbians are welcome, but cross-dressing isn't," The Feed, July 11, 2012, accessed October 30, 2012, <http://www.spot.ph/newsfeatures/51485/pma-bans-cross-dressing-for-gay-and-lesbian-cadets>.

27 PK Pascual, "Ladlad, Nine Years of Fighting for LGBT Rights," accessed February 13, 2013, <http://ladladpartylist.blogspot.com/search/label/Ladlad%20general>.

on the issue of equal protection under the law.²⁸ In 2012, the Supreme Court launched a pilot program to train trial judges on SOGIE (sexual orientation, gender identity and gender expression) issues,²⁹ employing leaders from local LGBT legal-advocacy organizations. The long-term effect of this training in producing favorable changes in the judicial treatment of SOGIE issues will, however, not be evident for the next few years.

At present, neither pro-gay nor anti-gay political camps have been able to have their respective agendas formalized in government policy. The proposed Anti-Racial, Ethnic and Anti-Religious Discrimination Act of 2011 has yet to be passed, with some senators objecting to the inclusion of sexual orientation and gender identity in the bill.³⁰ Anti-gay advocates, on the other hand, have to date been unsuccessful in legislating against same-sex marriage, and indeed have generated little widespread attention when picketing gay Pride events.³¹

The state's negligence in upholding the human rights of and providing protections for LGBT people is reflected in the passive stance that the Philippines has adopted on SOGIE issues in the United Nations. Despite pressure from civil society activists within the Philippines, in 2013 the government did not join discussions on and

chose to abstain from voting in support of a UN declaration calling for an end to extrajudicial killings based on sexual orientation.³² Previously the Philippines also abstained from voting on a landmark resolution in the UN Human Rights Council in 2011 that affirmed the universality of human rights, condemned violence and discrimination on the basis of sexual orientation, and requested the High Commissioner for Human Rights to prepare a global study on violence and discrimination on the basis of sexual orientation and gender identity. To date, President Aquino has not made a definitive policy declaration on SOGIE-related rights, instead making token references to LGBT people, such as in a media interview conducted during an official state visit to Washington, DC in 2011 in which he stated that adults "should be able to do whatever you want as long as you don't harm anybody else."³³

While negligence characterizes national-level response to SOGIE-related issues, some state agencies and local-level governments have implemented policies aimed at formalizing protections for LGBT people. The Philippine Commission for Human Rights (CHR), the nation's independent human rights institution, and its counterpart in the presidential palace, the Presidential Human Rights Committee (PHRC), have undertaken a range of projects in collaboration with LGBT CSOs with the aim of mainstreaming human rights for LGBT people within the broader human rights agenda. Local anti-discrimination ordinances are now in place in Quezon City, Cebu City and Davao City, and will soon be enacted in Bacolod City. In addition, the Civil Service Commission issued a memo on the inclusion of SOGIE in government eligibility examination requirements.

28 SC Jay Rempillo, "Ang Ladlad is Qualified Party-List Candidate" (April 2010), accessed October 29, 2012, <http://sc.judiciary.gov.ph/publications/benchmark/2010/04/041003.php> (page discontinued)

29 "Gov't institutes for judges to develop LGBT knowledge," *Outrage*, accessed February 13, 2013, <http://outragemag.com/online/govt-institute-for-judges-to-develop-lgbt-knowledge/>.

30 IAR Silverio, "Anti-discrimination bill faces rough sailing in Senate," *Bulatlat.com*, 2012, accessed February 13, 2013, <http://bulatlat.com/main/2012/08/30/anti-discrimination-bill-faces-rough-sailing-in-senate/>.

31 Laurindo Garcia, "Manila beams with pride, despite debut of anti-gay protesters," *Fridae*, December 8, 2008, accessed October 29, 2012, <http://www.fridae.asia/newsfeatures/2008/12/08/2168.manila-beams-with-pride-despite-debut-of-anti-gay-protesters>.

32 Zamboanga Journal, "Defend gay rights in UN statement, PROGAY tells Manila," *Zamboanga Journal*, accessed February 13, 2013, <http://zamboangajournal.blogspot.com/2011/02/defend-gay-rights-in-un-statement.html>.

33 "PNoy sympathizes on gay rights, not gay adoption," *Agence France-Presse*, September 21, 2011, accessed October 29, 2012, <http://www.abs-cbnnews.com/nation/09/21/11/pnoy-sympathizes-gay-rights-not-gay-adoption>.

JELAY

31-year-old Jelay (pseudonym) was born a biological male in Zamboanga del Norte, a province in the southern Philippines. Her parents are from Iloilo in the Visayas. She did not finish her Bachelor of Science in Architecture degree and now works on a commission basis as a beautician in a salon.

She became aware of her identity as a woman when she was in the Second Grade – the same time that she started to make friends exclusively with girls. She also started to have boy crushes at that time. She always joined dances and liked rifling through her mother's clothes when she was away. One time she was caught wearing her mother's dress and her parents scolded her. She started gaining her parents' acceptance when she did well in school and began to get on the school honor roll. When she was growing up, her siblings accepted her for who she was.

Jelay was born Catholic but recently converted to the Baptist religion. As a Catholic, she had no problems when she wore feminine clothes, but when she became a Baptist they made her change her way of dressing. She confronted the church pastor and told him she could not do it because this was the way she was. From then on the pastor allowed her to dress according to her preferred gender and be who she really was in church. Jelay believes that in the eyes of God, we are all equal.

Growing up, Jelay was always taunted for being bakla or bayot (effeminate) by random people on the streets, both males or females and kids and adults alike. When she went to get a police clearance, the police laughed at her and said she had "no use in society" because she was bakla. Six men physically assaulted her when she tried to defend a friend who was being harassed and cursed. She was stripped and beaten, but despite being outnumbered, she put up a good fight. She suffered facial injuries and broken ribs. The six men were arrested and detained by village officers. Jelay tried to file

a legal complaint against them but decided to withdraw the case because the village officers were mishandling the procedures.

Her sexual "awakening" happened when she was in second grade, when she was about eight years old. On the night it happened, her 20-year-old uncle carried her into his room and forcefully asked her to suck his penis because he said she was bakla. She had no idea about such things at that time. He forced himself on her; she was helpless and he was stronger than her. She was crying when her mother came home, there was blood splattered all over. Jelay was lying there with her anus torn and with some internal organs extruding. She was taken to the hospital and received stitches for her wounds. She also had to undergo a medico-legal examination. She heard her mother, uncle and his wife arguing. She heard them say that she was bakla and that she had probably flirted and asked for this to happen. She felt undignified after this.

Jelay's case was brought to court. There were two court hearings. They asked her to take the witness stand and tell the court the details about what happened. At just eight years of age, she was frightened and nervous. She could hear some people blaming her; they said she was bakla and that she had flirted with her uncle and provided the motive for him to force himself upon her. Even the judge questioned her integrity. Because of her age, her lawyer was able to defend her successfully. Her uncle was found guilty and was imprisoned.

For Jelay, the past often comes back to haunt her. She believes that sometimes a person cannot move on in the present without the past.

MANIFESTATIONS OF VIOLENCE

Throughout our interviews we found reports of a range of violence including physical, verbal and emotional violence.

Physical Violence

Most of those interviewed said family members within a nuclear family unit, predominantly male members of family or clan, including fathers, brothers, uncles and stepfathers, had inflicted most of the physical violence. Most incidents of violence occurred immediately after a person voluntarily disclosed her sexual orientation and/or gender identity, was “outed,” (a person’s sexual orientation or gender identity is revealed without the person’s knowledge or permission), or was suspected of being non-heteronormative. Heteronormative refers to the notion that there are only two genders, male or female, and that the only kind of attraction is heterosexual, which is between people of the opposite sex, i.e., between those who were assigned male and those who were assigned female sex at birth. Anyone who lives outside these parameters is considered non-heteronormative.

Many of the respondents reported being raped within their families ... [and] sexually abused by uncles during childhood and in pre-pubescence.

Vanessa, a transgender woman, recalled growing up in Dumaguete and being bullied and roughed up by her brothers. She said:

My friends dragged me to a dance party ... I managed to borrow a dress and wig. Then my friend suddenly warned me that my brother saw me. [My brother] boxed me, my wig fell, I ran away.

Some transgender women said that their mothers, aunts or other female relatives, upon learning of their sexual orientation and/or gender identity/

expression, had subjected them to violence. Madeline, a transgender woman, said:

I was four ... that was the time I remember that I’m really different because my mom slapped me when I wore her bra.

According to many respondents, perpetrators often used violence as punishment for their sexual orientation, gender identity or gender expression. Kel, a lesbian, said:

My uncle, he asked me directly like, ‘Are you a tomboy acting like that?’ I answered, ‘Yeah.’ He slapped me, so he said, ‘Why, why so?’ ... He said, ‘Have you had a boyfriend?’ And I said, ‘Yeah.’ ‘So why a girl?’ And I said, ‘I don’t know.’

In some instances, heterosexual males with whom victims shared a public space, such as on a street curb or at a dance party, inflicted violence in what were largely crimes of opportunity, often committing assault when their victims were vulnerable. This form of violence generally took the form of punching, slapping and the use of blunt objects.

Transgender woman Alyssa and another transgender woman were on the street, walking when a man crossed their path and said: “You transsexual/ homosexual people are bad!” The man then hit Alyssa on the back of her head, and the pair fled in fear. Agnes, a 26-year-old lesbian, was also threatened with violence by a stranger. She was in a taxi with her girlfriend when:

... out of the blue, I have no idea whether this male person is crazy or what. The guy pointed a laser light, the red one, at us. It was very painful, particularly on the eyes ... he was standing outside the taxi on the side of the road. ... Then he made a sign like this ... like he will cut off your head.

Several interviewees reported being subjected to violence that involved the use of firearms or other weapons. Transgender woman Vanessa from Dumaguete encountered bullies who felt offended seeing her in a dress. She said:

He beat me up and cut my hair while insulting me... I was almost gunned down... I managed to push my attackers, and I ran away naked. I ran in a zigzag so I dodged the bullets.

A number of the LBT respondents recalled incidences of violence in which the perpetrators, while not directly referring to their sexual orientation, gender identity or gender expression, appeared to exhibit bias as a motivation for their attacks. Lei, a transgender woman said:

... the security guard [at the clinic] was discourteous... You're not supposed to do that, I said. And he reacted, 'Is that so?' Pak! He ... hit [me] with the nightstick... They want me to use another line (a line for men), but I'm a woman, so what's your problem? I had an appointment there, and he blocked my way... He was violent.

Predominantly male members of family or clan ... had inflicted most of the physical violence ... perpetrators often used violence as punishment for [non-conforming] sexual orientation, gender identity or gender expression.

Many attacks were sudden and unanticipated, which left victims ill-prepared to defend themselves. Jason, a transgender woman, said that he became used to being singled out and attacked:

When people get drunk, they goad the *bakla*³⁴ with insults, then people start a brawl. So we band together and fight. In the end, the bakla lose to the guys. Without warning, they would slap a bakla. That starts the brawl.

34 Bakla is a Tagalog word that conflates a wide spectrum of SOGIE concepts that include male homosexuality, MTF transgenderism, and transvestism. Bayot is its equivalent in the Visayas and Mindanao island groups. Refer to Terminology section for further explanation.

Verbal and Emotional Violence

Respondents reported that emotional violence largely came from family members, significant others or ex-partners, co-workers, and strangers. This form of violence primarily involved criticism or rejection of actual or perceived sexual orientation, gender identity or gender expression or the choice of partner. Respondents said that they were taunted or ordered to change their sexuality or gender expression, for instance, by modifying their manner of clothing and demeanor.

Stef, a transgender respondent:

My father asked, 'Why do you look this way?' My hair is long, my eyebrows plucked. I was in pink again. 'Can't you be more masculine?' He said even if bakla, he'd want me to be more discreet. I could have shorter hair... It's so sad my own father does not accept me although he says, 'I love you, you are my child.' But I still do not feel the acceptance.

Grace, a lesbian respondent:

My mother said, 'If I ever learned that you have a relationship with a lesbian, I will kill you.'

Sometimes, family members communicated their discomfort about having LBT children through innuendos and jokes. Other times, the hostility was overtly expressed. For transgender women Alyssa and Magdalena, the insults heaped upon them were explicit and shaming in front of family or guests. Alyssa recalled:

... then [my father] will say to me, 'You went out last night again, you just suck cock, like that.' I think it is very painful that he will say that in front of the family, 'You like, you just want to suck cock outside.'

Magdalena said:

I was playing with my nephew... I was

tickling him, he was laughing and enjoying and [my mother] told me that that kind of action ‘tickling a baby boy and you are gay; that’s a form of molestation, child molestation.’ So I really felt bad, I cried.

Angel, 42, provided an example of verbal and emotional violence that was accompanied by a violent physical act. After telling her family that she was a lesbian, her brother took out a gun and shot their pet dog, saying, “Ako, naglagot ako sa imo [I am mad at you]. I might be able to kill you.” Verbal violence, which often contains a directive to change behavior or dress, also serves to remind LBT women of a female’s place in society. May Rhoda, a transgender woman, analyzed her boyfriend’s frequent verbal abuse:

When he gets mad, he always tells me, ‘Don’t feel confident that you are moneyed; you’re just a bayot [gay/transgender person]’... That I’m so underestimated that I’m really, really small. It pisses me off. If I am ‘just a bayot’, why did he still chase after me?

Traditionally, families do not disown Filipino LBT children because nuclear families need to remain intact as an economically functioning unit. However, Pol, a transgender woman, lamented that she was forced to leave home after her father caught her flirting with some men in her native Bacolod City:

I left everything behind in Manila just for you guys and this is how you repay me? You’re kicking me out?... I lived in boarding houses; I’ve never been kicked out [by them] but here, within my own family, my father kicks me out. So I was really, really hurt.

Many of the LBT women interviewed for this research also reported experiencing verbal and emotional violence outside of the home. Brigitte, a transgender sex worker, recalled a saleswoman addressing her as “Sir.” “That’s an insult. Oh my

God, look at my boobs, so huge, and you’re going to call me sir?” Brigitte recalled. Most of the emotional and verbal violence that respondents experienced took the form of sexually loaded taunts, catcalls, whistles, the playing of music offensive to transgender women, gestures, visual signs and insults posted online from either strangers, neighbors, acquaintances and employees of public establishments. The content of the verbal attacks consisted mostly of thinly veiled invitations for sex, putdowns laden with stereotypes, and threats of injury or sexual assault.

Rain’s sister, a makeup artist who accepted Rain’s transgenderism, proudly uploaded videos of Rain’s cosmetic transformations. Instead of praise, online commentators posted such remarks as “Oh, so this a trans/gay” after they realized she was a transgender woman. Rain found those comments to be “offensive and insensitive.”

Violence in the Name of Religion

Only a small number of the LBT women we interviewed said that they considered religion a critical factor for their emotional, psychological or social development. Those who considered faith to be important in their lives said they felt violated by homophobic or transphobic church doctrine, or they blamed religious tenets for promoting oppression within their families.

Sheena, a bisexual woman:

I think what happened was a result of my parents being constantly bombarded by advice from their ... church. Before [they started going to church], they were not like that. It seemed that they knew [my sexual orientation] and they were letting me be; but with that pressure from the church, they became strict with me.

Other respondents coped by either quietly conforming to the rules of their church or by leaving the church altogether. Kaycee, a transgender woman, said:

I was born Catholic, my father reminded me... when I told him I am a woman, he said, 'No, you're not, you're born male, you have to be man, you're a boy' ... I said I am not in between, I am a woman... That's why I changed my religion ... [to what] I call paganism or pagan.

Some respondents like transwoman Vanessa had an opposite reaction to religious pressure:

Religion doesn't influence me on being a transgender. Religion did not have an effect on me. I just believe in God.



Violence in Schools

Warranting special attention are the human rights violations taking place against LBT students in schools, where institutional rules, policies, and practices effectively create a climate of exclusion and facilitate instances of violence and abuse. Official academic activities often provide the cover for violations.

Cindy, a 27-year-old transgender woman recalled how an ROTC (Reserve Officers' Training Corps) superior officer picked on her and her fellow female transgender ROTC cadets:

... the officer, he was super angry because

the bayots³⁵ won't march at all ... they think we are only slacking off. But we weren't relaxing at all because we waxed the floor... sell soda drinks, carrying soda cases... we really got two punches that time, which is not right ... our bodies were still so thin that time.

Respondents said emotional violence from fellow students was commonplace. Transgender respondent Vanessa recalled being taunted by her classmates in high school:

I walked in the corridors just not to be seen by the students. Once you walk [along an open pathway or outside] the building, they taunt you: 'Bakla! Bayot!'

Sexual Violence

Many of the respondents reported being raped within their families. Most of the victims were transgender women who were sexually abused by uncles during childhood and in pre-pubescence. Pol, transgender respondent:

So I was raped... [when I was in the] 5th Grade, 6th Grade... I was scared of my uncle; he was a drug addict... [It] might destroy the family... I live with him now... It's hard to explain... he just laid beside me then... he took my hand, and that's it... I'm still ashamed...Ashamed for him... It's because he did it to me, his nephew.

Many transgender women only become aware later in life that what they experienced as children is sexual violence. Mae, a 24-year-old transgender woman, surmised that she must have exhibited signals that the perpetrators perceived as license to molest her. She said:

I think I was 10 years old, 11. Actually, not just with my uncle but with some

35 Bayot is the Visayan language word for bakla. See Glossary section for further explanation.

of my neighbors... But I did not resist... because ... they know that maybe I was transgender/effeminate, so they will just [unfinished phrase] ...

Transgender woman Jelay said:

He [my uncle] lifted me bodily into the room. He said, 'You're a *bakla* so you suck my penis.' Of course, at that time [I was in second grade], I had no idea about those things. Then he told me to just suck it...[He raped me and] my anus was torn, some organs came out of the wound, and it was stitched later.

Several respondents said they had considered suicide in the immediate aftermath of verbal abuse, which often represented the culmination of years of mistreatment.

At the time, only cisgendered women could be legally considered rape victims, but a case was filed nonetheless against Jelay's uncle. During the court hearing, both the local community and the judge were alleged to have commented on the presumed role Jelay's own identity as a transgender girl played in the assault. According to Jelay:

When my mother came home [after the attack], I had a lot of blood here [indicating his buttocks], and ... my mother and my uncle and his wife [argued, saying], 'She is a *bakla* she probably flirted and asked for it.' It was brought to court because I was a minor that time, and [my uncle] was sent to prison until now...

There was a hearing, and of course people from both sides came [to court]. His side of the family, they were saying things like, 'Because she's *bakla*, maybe she flirted with the guy.' ... The judge questioned me; he thought maybe I was showing motives for the guy ... Then

our lawyer asked how can I show motive when I was so young and didn't know much about those things... I think we had two hearings.

Anne, a bisexual woman, said her former male partner used physical and sexual assault as a means of denigrating her sexual orientation:

[It happened] a few times. I denied it because it is one of the justifications he had in beating me, so I totally denied it after. But he wouldn't believe me [referring to her sexual orientation]. He even humiliated me also because of that... Because I think he found it intimidating, that's what he said anyway. "What can you find in those women?"

Many people in the transgender community advise against working in typecast occupations, suggesting instead that transgender people take up corporate work or enter political office to avoid discrimination and abuse. However, one transgender woman who worked as a village official found that her position offered her no protection from a colleague's sexual advances.

Lei, transgender respondent:

... we were talking, then he said, 'You are very ... *Kap*³⁶ ... Your hands are a bit unbecoming. We're just going to look at your [breasts] ...' I've heard from other *kagawads* (village officers) who are with me that he brags that he was able to mash my breasts.

Transgender women in our research also reported being subject to physical and sexual violence at the hands of strangers or acquaintances, which included unwanted touching of the body, forced sexual acts, humiliation and the inflicting of pain.

36 *Kap* is a colloquial honorary title, the abbreviated form of *capitan de barangay* (village captain).

Candy, transgender respondent:

Men who hang out at [street] corners, they touch me. They ask me while doing that, 'Do I have a vagina yet?' I tell them, 'None yet, just wait and we'll get there.'

Svetlana, transgender respondent:

There was this guy [from out of nowhere] forcing me to have sex with him. I told him I can't, I made all the excuses – No, no, no, am so tired, I have boyfriend. Suddenly I told him, [I] am sick, I have STD ... he grab me somewhere in the dark, push me, like do something about it, do something very sexual like... I was able to escape.

Madelene is a transgender rape survivor, and was able to put her abuse in a social context, lamenting the fact that she was considered a slave, a toy, the recipient of punishment, a worthless sex object, a used object, a nothing:

My hands were tied behind my back and I was stripped of my clothes. Good thing I was able to escape... it was just 'attempted' [rape], I mean... like you're a sex slave; [a] play toy. It is tolerable men to have sex with a transgender because [the perpetrator is] still a man and it is [the transgender women's] punishment because he's making himself a woman. Punishment ... look, you're dressed like a woman so I'll have sex with you ... It is like we're just being used because we do not have worth. You're a sexual object. You are used, and after that you are nothing.

MANIFESTATIONS OF DISCRIMINATION

Discrimination in Schools

Some teachers appeared to impose their own personal values and used institutional rules to suppress people's gender expression, including giving students lower grades than they deserved.

Lesbian respondent Kel:

... she [my high school teacher] said ... I should behave accordingly and not like the way I'm behaving now... I had some crushes, too; she didn't like it... that's why she's involving my grades.

Many of the LBT women interviewed said they felt pressured to alter their preferred gender expression while at school and while wearing school uniforms. They reported that some officials explicitly sought to change their behavior. Transgender woman, Madelene, said:

You get to talk with the disciplinarian. They act like, "Why are you being disciplined?" [I said] because of what I wore, sir. 'What are you wearing?' Women's clothes. 'Why are you wearing a woman's clothes? You're a man. Don't you know that it is a sin... because you are born as a man? God never made man as a woman.' They really let you feel guilty so that you revert back to be like that.

One school tasked health workers with determining the sexual orientation and gender identity of particular students who had been singled out for attention. Stef, transgender respondent said:

... they [counselors] were trying to rehabilitate us. ... I think it was Grade 6 ... All of us, gays in the whole batch...

We were sent to the guidance counselor. Slowly we were asked about how we feel. Were we girls? Boys? Who do we idolize? What do we do? Do we think it was proper? ... [Our] parents were summoned and told that their son is gay.

Discrimination in the Workplace

LBT women also face discrimination when applying for jobs, and are often denied employment despite being better educated and having either equal or better qualifications than other applicants. They are either told upfront the reasons for their being unsuccessful or are left to speculate on the reasons for being denied a job.

Del, transgender respondent:

It's like when I applied at that company, which was a call center; they told me, 'Sorry, we don't take cross-dressers.' So I was hurt, because it's like, I came all this way for nothing.

Cindy, transgender respondent:

I immediately applied... my resume was returned [with a note that] said, 'Can you just think this over first if you are really for this job?'

Discrimination in Healthcare and Service Institutions

The transgender women interviewed for our study reported being pointedly ignored when they sought health care. Some were refused service and referrals, largely on the basis of religious bias. After being punched in the face following a petty quarrel, Princess, a transgender woman, went to the hospital, accompanied by a friend, to seek medical care and was ignored. She said:

...they [health workers] were laughing at us; [there was] blood all over my face, [but] they just ignored us. No one in the hospital approached us. But if they see a straight guy and girl, they will immediately assist them, but if they see an injured trans, they will just ignore you.

Health-care workers passed judgment on transgender women even if the women simply accompanied someone else to a medical facility or volunteered to donate blood. Transgender woman Seanel recalled helping her mother visit her doctor:

I said, good evening, Doc. He looks shocked that I have a big voice ... 'What are you?' ... he keeps on asking me, 'Why are you like that?' In the first place, we went there for my mom, [he was not supposed] to criticize or interrogate me for what I am... 'Why are you like that? Do your mom and dad allow you to be like that?'

Some lesbian respondents recalled being forced to undergo psychiatric analysis without prior consent during their childhood or following a domestic dispute. Robyn, a lesbian, attempted suicide when she was fifteen after a failed relationship. Her mother took her on a trip to Manila without telling her the purpose:

I didn't know I was to meet the doctor, so for me it was like I was betrayed... Only later did I learn I was to meet [the doctor, and she] wasn't that helpful [She said:] 'Why did you attempt suicide? Was it because of a guy? Because of a girl?' ... She said, 'You can't accept that you are a tomboy,' that was her choice of word. That time it felt very big, not for someone young like me.

ANGEL

Angel (pseudonym) is 42 years old and identifies as a lesbian, or in her local language, a dong. She was born in Davao City while her parents are from Leyte and Samar in the Visayas. She completed a BS Agriculture degree and worked as a government employee for four years before venturing into business. Her entrepreneurial spirit led her to open an Internet cafe and bar. She also rented out videoke [karaoke] machines when they were a popular fad.

Angel began having crushes on girls while in high school, but she kept denying these feelings. She suppressed her feelings for a long time because she disliked the idea of becoming a lesbian. Her fear of being taunted kept her from telling her close lesbian friend about her feelings. Instead she sought refuge in God, with whom she shared her innermost feelings. At that time, she prayed hard not to be a lesbian. When she was in college, Angel started opening up to other people about her attraction to girls, but she remained guarded and kept it from her family. She was masculine in character and was not open to her family about her same-sex relations because of their Catholic background; her mother and siblings were active in church. When she was younger, she hated wearing skirts. Her mother and sister usually dragged her to the department store and bought her skirts and feminine clothes, even though she did not wear any of them.

At the age of 24, having waited until she was old enough, she fully accepted her own identity as a dong and entered into a relationship with a woman. She did not have any plans to live with a woman at that point, at least not until her family learned about the relationship.

She was 32 years old when her family discovered her relationship. It was both a happy and sad event – happy because it liberated her but sad because her family was angry with her. They rejected the relationship and

became very angry with her, particularly her sister and brother. Her sister accused her of being immoral and of not wanting her children (Angel's nephews and nieces) to witness her immorality. Her brother said that he might kill her. At the height of his rejection, he took out a gun and shot their pet dog. Angel was forced to run away without a single peso in her pocket and live with her girlfriend and girlfriend's family. She did not want to leave her family because they were important to her but these circumstances led her to start a life of her own with her girlfriend. Angel worked at different odd jobs to survive and to supplement the income from their small sari-sari [mom-and-pop] store. She began a family of her own, and together with her partner raised a daughter.

Angel continues to go through the demands of everyday life as a dong. Her masculine appearance means she often encounters banter in female toilets or quizzical looks when she accesses health-care services. She is taunted for being a butch dong. But for her, the most difficult part is her family's rejection. She finds it difficult when it is her family who is her adversary. She has spent the past eight years striving to show her family that she can make it on her own without asking for their help. She acknowledges that she is not immoral; she still prays and considers herself a child of God no matter what.

Recently, Angel broke up with her live-in partner and now lives alone. Her daughter is now under the care of her aunt. For a long time her brother tried to initiate dialogue with her, but Angel rejected his efforts until recently. Now reconciliation with her family has begun. She looks forward to a liberated, happy and empowered life ahead.

Restricted Access to Public Facilities

Many of the LBT women we interviewed recalled being physically barred from entering a public space or being compelled to leave after they had entered. This was particularly evident in relation to transgender women being denied access to women's areas in gender-segregated washrooms and trains with special carriages designated for females and parents with young children. Svetlana, transgender respondent:

Well, one time I was not allowed to stay in the female section in the LRT (Light Railway Transit) ... also in public toilets, sometimes I do get a lot like, 'You go to the male area.'

In order to avoid humiliation, some of the transgender women interviewed said they would try to gain access to toilets when no one was looking, use gender-neutral toilets or simply avoid using public toilets altogether. Mae, transgender respondent, said:

I had a dialogue with the HR [human resources] manager. He told me that ... there are other female employees that are not comfortable [with me using the women's room] and [they] would complain about ... transgender female in the female lounge.

State Discrimination

Most of the transgender women we interviewed had experienced harassment and discrimination when they applied for passports and other documents for international travel. The offenders were usually processing officers at Department of Foreign Affairs offices.

Transgender woman Madelene:

I was already hungry because I was there as early as 6am, or maybe 5am. Then,

when you reach the end of your queue, they would delay you because you're a woman, but when they see your gender, male... [they say] 'Oh, it's really necessary, ma'am, because we have a memorandum... that transgenders should look like men in their passport photo.'

Police officers and members of the military were also responsible for harassing, bullying and ridiculing transgender women. In some instances, respondents said they were arbitrarily detained, and asked or ordered to provide sexual favors. They said desk officers often neglected or taunted them. Alyssa, a transgender respondent, said

... when I go to government agencies, I could feel sometimes the government employee ... will make fun of you... I can see them laughing in front of me... Kind of weird you're in the government, you should be acting like a good person serving the public, but instead you're making fun of the people.

IMPACT OF VIOLENCE AND DISCRIMINATION

The LBT women interviewed for this research project said their experiences with discrimination and violence had psychological consequences, including sadness, clinical depression, fear of rejection, fear of relationships, self-doubt, self-blame and resignation. Some respondents also reported anger, paranoia, aggressiveness towards themselves and their partners, and a heightened sense of combativeness.

Kel, lesbian respondent:

It's like, 'Why is it like this? Why is this happening to me? Why do I have to go through all of these? Am I being punished?'

Svetlana, transgender woman:

I learn to be more careful ... paranoid

about things, and oftentimes I get more prejudice. Sometimes I prefer to stay home rather than go out.

Several respondents said they had considered suicide in the immediate aftermath of verbal abuse, which often represented the culmination of years of mistreatment. Stef, a 24-year-old transgender woman, said:

My mom scolded me again that time, I don't know about what, but it is connected with my being gay. I kept on crying on the stairs. I got a knife and attempted to cut my wrist.

Vanessa, a 61-year-old transgender woman, said the violence she had faced at home had led her to drop out of school early. She said her lack of education had seriously impacted her ability to be financially independent later in life:

I didn't finish my studies because I was battered by my brothers. They didn't want me to be transgender/effeminate gay.

Grace, a 21-year-old lesbian graphic artist, said that repeated attacks by co-workers had impacted her performance at work:

It's like I have moments that I would just stare off, I couldn't work. It's like I keep on questioning, 'Is my drawing alright?' They [co-workers] really damaged my confidence as an artist. So it was not just about the workplace anymore, it was on a personal level.

One respondent said she vowed to overcome adversity and use her experiences with workplace discrimination to fight for equality for other LBT people. Rain, a transgender woman who works as a recruitment officer in a call center said:

As recruitment personnel myself, I always make sure that I am sensitive. I uphold equality and think about what I do because I know that I can do better compared to the HR personnel [who discriminated against me] before.

COPING METHODS AND LBT RESILIENCE

Community support was often lacking or absent for LBT women. Law enforcement also failed to intervene when there was violence.

Anne, a bisexual woman was in a physically abusive marriage for a year:

I remember there was a time and he [my husband] was beating me ... I could see the neighbors outside. Can you imagine neighbors and police outside? And nobody would get in. The police said they could not interfere because it was a domestic problem. So they were outside but they wouldn't help.

Jason, a 21-year-old transgender woman, felt it was preferable not to rely on people from outside the LBT community in overcoming discrimination:

Maybe it can help, but in my opinion we should fight our own battles and not depend on others.

Many LBT people we interviewed said they relied on inner fortitude and support from friends to cope. Some respondents said they received their first tangible support and advice from school guidance counselors or class advisers. Grace, a lesbian graphic artist, said that one of her teachers had recommended that she not come out to her parents until much later in life:

A teacher advised me; she said, 'Don't tell them yet because you'll never know what your parents are going to do. You are still studying. Take my advice,' she said. "You tell them once you have a job of your own and you're living on your own."

Krizia, a lesbian, said she provided support to another gay friend who was experiencing violence:

I tell him that it's alright, that he's still

young, that he'll still have more relationships than he expected.

For some LBT respondents, banding together proved an effective strategy, particularly when negotiating discriminatory policies. Transgender woman Stef said a united front had enabled her and her transgender peers to reach an agreement with school authorities on a mutually acceptable policy on hair length. She said:

We asked the dean if we could compromise since we've worn our hair long for sometime already ...there was an agreement that when we go to school, we have to tie our hair so it won't show.

Broader mobilization has also proven effective. One transgender woman, Svetlana, used the Internet to raise awareness about a series of unexplained drive-by shootings targeting the transgender community and reach out to LGBT rights groups for support. She posted a note on her Facebook wall about the pellet-gun shootings victimizing her friends. 'It spread all over LGBT groups in the country and they did do something about it,' she said.³⁷

Others said they were actively working to change both attitudes and policy. Mae, a transgender respondent, went to the human resources manager at her workplace and raised the issue of toilet access for transgender employees. "So what he [the manager] did, he converted the handicapped CR [comfort room/toilet], the one that is for handicapped people," she said.

LBT women working in government agencies and NGOs generally have a working knowledge of the laws and policies mandating state agencies and NGOs to protect LBT people from discrimination. However, it appeared from our interviews that this knowledge was not passed along to the general LBT community. The majority of respondents

had no knowledge of which institutions they could approach to make a formal complaint of discrimination. Some respondents learned this information later in life, often years after their initial experiences with discrimination. Only a small number of the LBT women interviewed believed there was strength in numbers and looked ahead to how they might best support those most marginalized in their community, such as older LBT persons. Charlie, a transgender respondent, said:

I'm planning for old gays because here I have old gay friends and I have some old bisexual friends here, and you know some of them are abandoned by their family, so in my little way I am trying to help them.

NGOs that provide support for LBT women have emerged in recent years, inspiring the younger generation to consider careers in service provision, in particular counseling, where they transform their personal experiences into support for others. Madalene, a transgender respondent, said:

We're not that trained to give counsel, but... we are support for counseling ... we give good advice ... [F]or me, most of the concerns of the counselor is with the [gender] transition. So what they always ask is, 'Is this healthy? ...Is this hormones? ...Is this good?' We just base it on our experience.

Some respondents also reported that they had successfully coordinated with government agencies to bring about positive change. Pol, a transgender woman based in Bacolod City, said she had contacted the government official responsible for gender and development. "She was the previous chairperson for gender and development. She authored a manual on protecting LGBTs from discrimination," Pol said.

Despite the prevalence of discrimination and violence, some of the LBT women we interviewed reported having positive life experiences, at times with support from unexpected sources and in surprising situations. Agnes a 26-year-old lesbian, recalled driving around one

37 "Pellet Gun Attacks and Hate Crimes," *God Antifornicator*, accessed February 13, 2013, <http://antifornicator.com/pellet-gun-attacks-and-hate-crimes>.



day with her high school group, three girls who were devout Christians:

Then we were in a car, I told Ruth... I am bothered since it's considered a sin... Her response was really, really unexpected. She said, 'You know our God is a just God. He will not punish you or send you to hell because you're a lesbian. He or she will judge you depending on what you did with your life. So don't worry.'

Two transgender women said they were lucky to have grown up in supportive environments. Randy, a transgender respondent, said:

Where I come from, people liked me. I was this jolly kid that everyone liked. Some were even pointing out that they wanted to have a child somewhat like

me. Because, you know, back there I was the only effeminate child in the neighborhood. I think they were envious seeing a child who liked dancing and singing in town fiestas.

Sugarli, transgender respondent:

[Discrimination] never happened because our principal is very supportive and they find me very productive because I always help, especially those, in programs in school.

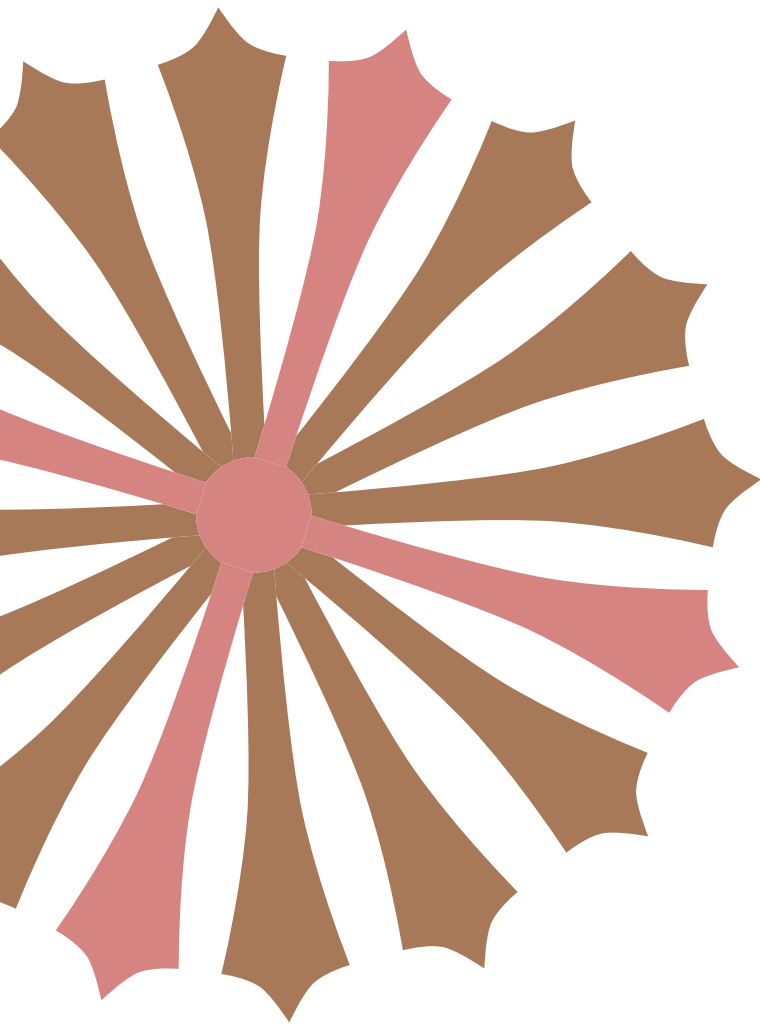
Raycee, a transgender woman who works as a freelance researcher, had a positive experience with the Department of Foreign Affairs:

I went to the DFA to renew my passport, and then a certain man interviewed me,

asked what do I want to put [as] my gender. He typed female, and then I corrected him, that can you please put male instead so that I would not have [a] problem when I go out the country. I felt very happy because he put female in my passport as my gender - that's so nice.

Many respondents said that they had been unaffected by the taunts directed at them and were able to rise above feelings of negativity. Raycee, a transgender respondent, said:

When I was younger, they [people in general] sometimes call me bakla, but then I don't really mind them, because after all they are not the one who put food on my table. Why should I mind them? It doesn't make me a lesser person if they told me that, and I don't mind them at all.



PHILIPPINES LAWS AND LBT PEOPLE

The Philippines was under Spanish rule for more than three centuries, during which time Spanish laws were enacted, including the criminalization of “sodomy.” According to one historical account, the ruling Spanish Royal Audencia in 1599 issued an ordinance targeting Chinese traders who were deemed to have introduced “sodomy” among the male and female indigenous Filipinos of Manila. Under the ordinance, “sodomy” was punishable by burning at the stake and confiscation of property.³⁸

In 1822, when the Napoleonic Code was adopted in Spain, the colonial government adhered to the legislative changes made under the new and more liberal regime, which remained in place after the conservatives regained power.³⁹ Indeed, in modern times, the word “sodomy” only reappeared in Philippine law in 1995, when sodomy was listed as one of a number of prohibited acts or “elements” related to the initiation rites of fraternities under an anti-hazing law (RA 8049).⁴⁰ Outside of the crime of hazing, sodomy is not criminalized.

Following Spain's ceding of the Philippines to the United States in 1898, a Revised Penal Code (RPC) was passed by the Philippine Assembly in 1932. It did not criminalize same-sex activities, homosexuality or transgenderism. However, certain provisions described in detail in the following paragraphs have been the basis for the State to target LGBT people. One of the provisions of the **RPC is Article 202 which defines vagrancy as:**

38 Ambeth Ocampo, “Sodomy in old laws and dictionaries,” *Philippine Daily Inquirer* (November 10, 2010), accessed October 28, 2012, <http://opinion.inquirer.net/inquireropinion/columns/view/20101110-302397/Sodomy-in-old-laws-and-dictionaries>.

39 Douglas Sanders, “377 and the Unnatural Afterlife of British Colonialism in Asia,” *Asian Journal of Comparative Law*, (Vol. 4, Issue 1, Article, 7, 2009), 22.

40 Republic Act No. 8049 [Anti-Hazing Law], *Philippine Laws, Statute and Codes*, Chan Robles Virtual Law Library, accessed October 28, 2012, <http://www.chanrobles.com/antihazinglaw.htm>.

1. "Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling";
2. "Any person found loitering about public or semi-public buildings or places or trampling or wandering about the country or the streets without visible means of support";
3. "Any idle or dissolute person who lingers in houses of ill fame; ruffians or pimps and those who habitually associate with prostitutes," and
4. "Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose".⁴¹

Article 202 also defines "prostitutes" as "women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct."⁴² This Article is often used as basis for the arrest of gay men and transgender women for vagrancy. However, despite the frequency of arrests made on this basis nationwide,⁴³ to our knowledge few formal complaints were lodged, next to no investigations were undertaken, and no convictions were made. It would therefore appear that the arrests were acts of harassment rather than an enforcement of the law. In 2012, Congress repealed the vagrancy portion of the law but retained the criminalization of prostitution for women only.⁴⁴ It is hence too soon to

determine the impact this is having on gay men and transgender people.

Articles 336 (acts of lasciviousness) and Article 340 (corruption of minors) of the RPC have been the provisions most frequently used as a pretext to arrest, detain, charge, convict and sentence transgender women and bakla who have been found guilty of having sexual contact with a male. After rape was redefined in 1997 to include acts of sexual assault against men, RA 8353 or the Anti-Rape Law⁴⁵ became the preferred tool used against bakla, and transgender women, who under Philippine law are still considered male.

Article 200 defines a **grave scandal** as one committed by "any person who shall offend against decency or good customs by any highly scandalous conduct not expressly falling within any other article of this Code."⁴⁶ This vaguely defined provision is also used as basis for conducting raids of bars and saunas frequented by gay males.

Article 201 under the "**Offenses Against Decency and Good Customs**" provision which prohibits "immoral doctrines, obscene publications and exhibitions and indecent shows"⁴⁷ is used as a pretext to conduct searches of leisure establishments for the presence of pornographic material or proof of stripping or theatrical displays of sexual intercourse.⁴⁸

41 An Act Revising the Penal Code and Other Penal Laws, The Revised Penal Code of the Philippines, accessed February 15, 2013, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_revised_penal_code.pdf.

42 *An Act Revising the Penal Code and Other Penal Laws, The Revised Penal Code of the Philippines*, accessed February 15, 2013, viewed February 15 2013, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_revised_penal_code.pdf.

43 Christopher Mendoza, "BSTPO Collars five lady boys and two commercial sex workers," *Boracay Sun Newspaper*, 2012, accessed October 29, 2012. <http://boracaylive.com/news/bstpo-collars-five-lady-boys>.

44 Republic Act No. 10158 (An Act Decriminalizing Vagrancy, Amending for this Purpose Article 202 of Act No. 3815, as

amended, otherwise known as the Revised Penal Code), Republic of the Philippines, Congress of the Philippines, July 25, 2011, accessed October 28, 2012, <http://www.gov.ph/2012/03/27/republic-act-no-10158>.

45 Republic Act No. 8353 [The Anti-Rape Law of 1997], *Philippine Laws, Statute and Codes*, Chan Robles Virtual Law Library, accessed October 29, 2012, <http://www.chanrobles.com/republicactno8353.htm>.

46 An Act Revising the Penal Code and Other Penal Laws, The Revised Penal Code of the Philippines, accessed February 15, 2013, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_revised_penal_code.pdf.

47 An Act Revising the Penal Code and Other Penal Laws, The Revised Penal Code of the Philippines, accessed February 15, 2013, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_revised_penal_code.pdf.

48 "Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines, A Coalition Report,"

Under “**Crimes Against Liberty,” Article 267** on “**Kidnapping And Serious Illegal Detention**”⁴⁹ has been used to charge lesbians and transgender men with abduction and kidnapping, which generally occurs when the parents of daughters who have eloped with their lesbian or male transgender partners call on police to threaten the couple and attempt to force them to separate.

The Anti-Trafficking in Persons Act of 2003 defines trafficking of persons as including the exploitation or prostitution of others or other forms of sexual exploitation. This law has been used to justify surprise searches of establishments frequented by transgender women and bakla in order to obtain evidence of transactional sex, which is punishable by law. However, it would appear that the raids are designed to harass and extort patrons and staff, who are subsequently arrested on charges related to trafficking, then invariably released with no formal charges against them.⁵⁰

Legal Protections for LBT People

While there is no national anti-discrimination law that provides protection for LGBT people on the basis of sexual orientation and gender identity, there are some cities that have enacted or are in the process of enacting local ordinances for that purpose. Among the local governments that have enacted local ordinances are Cebu City on October 17, 2012, and Davao City on December 12, 2012.⁵¹ In 2002,

Quezon City passed an ordinance protecting LGBT people from discrimination in the workplace.

The Family Code of the Philippines (Executive Order No. 209, July 6, 1987) defines marriage as a union between a man and a woman; hence marriage is not legally permissible between two men or two women.⁵² Additionally, bills have been proposed to allow marriages only for “natural-born” men and women to prevent transgender people from marrying their partners.^{53,54} In any event, there is no law covering gender recognition that would allow transgender people to change their legal documents to reflect the gender with which they identify.

Transgender and lesbian students also find it difficult to assert their right to gender expression in the choice of either the male or female school uniforms worn at both public and private schools. The schools rely on the Education Act of 1982 to determine internal policies governing student behavior, irrespective of the discriminatory nature of some of those policies.⁵⁵

International Gay and Lesbian Human Rights Commission (IGLHRC), October 2012, accessed October 29, 2012, http://www2.ohchr.org/english/bodies/hrc/docs/ngos/IGLHRC_Philippines_HRC106.pdf.

49 An Act Revising the Penal Code and Other Penal Laws, The Revised Penal Code of the Philippines, accessed February 15, 2013, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_revised_penal_code.pdf.

50 Oscar Atadero, “Opening communication lines with fingers crossed,” *Outrage Magazine*, July 27, 2012, accessed October 25, 2012, <http://outragemag.com/online/opening-communication-lines-with-fingers-crossed>.

51 Paolo Romero, “Gays, lesbians press for passage of anti-discrimination law,” *Philippine Star*, May 17, 2011, accessed October 25, 2012, <http://www.philstar.com/Article>.

[aspx?articleId=686831&publicationSubCategoryId=](http://www.sunstar.com.ph/breaking-news/2012/10/18/passage-cebus-anti-discrimination-law-lauded-248601), “Passage of Cebu’s anti-discrimination law lauded, *Sun Star*, October 18, 2012, accessed February 16, 2013, <http://www.sunstar.com.ph/breaking-news/2012/10/18/passage-cebus-anti-discrimination-law-lauded-248601>.

52 Amita Legaspi, “Palace on same-sex marriage: Up to Congress,” *Philippine Headline News Online*, May 11, 2012, accessed October 25, 2012, <http://www.newsflash.org/2004/02/hl111803.htm>.

53 “Philippines: Defend Transgender Rights,” International Gay and Lesbian Human Rights Commission (IGLHRC), August 30, 2001, accessed October 30, 2012, <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/724.html>.

54 Philippines: Proposed Marriage Legislation In Senate Discriminates Against Homosexuals And Transgenders,” International Gay and Lesbian Human Rights Commission (IGLHRC), February 10, 1999, accessed October 30, 2012, <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/142.html>.

55 Batas Pambansa Bilang 232 [Education Act of 1982], *Philippine Laws, Statute and Codes*. Chan Robles Virtual Law Library, accessed October 30, 2012, <http://www.chanrobles.com/bataspambansabilang232.htm>.

Stakeholder Responses

In consideration of the legal landscape for LBT people in the Philippines, we asked representatives from state agencies to respond to the violence and discrimination that LBT people are facing.

The executive director of the Presidential Human Rights Committee (PHRC) signaled that proactive steps were being taken: “Right now we are taking certain steps to present to the President that there are pressing human rights issues in the LGBT community. That is why we are engaging many CSOs ... to touch base and get to know [their] demands and concerns; that is, to identify the affirmative action that must be done for them.” The PHRC is in charge of ensuring proper implementation of UN human rights conventions by the three branches of government. At the time the interview was conducted, the PHRC had conducted several meetings with LGBT advocacy groups.⁵⁶

Representatives from other executive agencies who we interviewed for this study, such as the National Commission for Indigenous Peoples (NCIP), the Population Institute (PI), and the Philippine Commission for Women (PCW) did not elaborate programmatic steps towards addressing SOGIE-related issues, but said their programs were open to everyone, regardless of SOGIE. All three echoed the view that domestic violence laws could cover LBT people. The PCW and NCIP said agency directives were decided on a top-down basis, and that the organizational culture allowed for only very gradual change. The PI conducts minimal policy work and has no service programs that could impact the welfare of LBT people.

Two other stakeholder respondents were elected legislators – one from local government and one from national government. The first, a member of the Cebu Provincial Board, had filed a local anti-discrimination ordinance as an action to support

the welfare of people with disabilities, with the aim of making them “productive members of community.” While championing the rights of LGBT people, this stakeholder had a minimal understanding of sexual orientation and gender identity and the concerns of LBT women, which highlights the need for more engagement with LBT CSOs.

The other stakeholder respondent, a Congressman from the House of Representatives with a strong human rights background, had filed an anti-discrimination bill that he felt, in retrospect, was insufficient. He said, “There will be a need for a more comprehensive and a more all-encompassing bill like the CEDAW [Convention on the Elimination of All Forms of Discrimination Against Women] or the framework of the CEDAW, for LGBTs.”

He also said that the executive branch had more powers than the legislative branch to address SOGIE [sexual orientation, gender identity and gender expression] rights. A representative from the Philippines Commission on Human Rights, who served as its ombudsman and capacity-builder, signaled the agency’s readiness to go beyond available laws, and apply all UN instruments, such as the CEDAW and the Yogyakarta Principles,⁵⁷ in order to hold the government accountable to its human rights obligations to LBT people.

While many of these initiatives are outwardly positive, there are to date no specific government-agency service provisions that address the gender-specific needs of LGBT people. When asked if agency offices have specific programs in place or targeted orientation for LGBT clients, the government-agency representatives interviewed for this study uniformly said that LGBT people could avail themselves of all their general programs and that no one was discriminated against in service provision. This assertion was contradicted by our research.

56 Samar News, “Malacañang hosts historic LGBT rights confab,” *Samar News*, December 12, 2011, accessed February 13, 2013, <http://www.samarnews.com/news2011/dec/b421.htm>.

57 Yogyakarta Principles are a set of international principles relating to sexual orientation and gender identity. See more at <http://www.yogyakartaprinciples.org/>.

RECOMMENDATIONS

In order to overcome the human rights violations taking place against LBT women in the Philippines, as highlighted in this report, the Rainbow Rights Project recommends the following actions:

GOVERNMENT

The Philippines Congress must:

- Institute a multi-level and nationally supported policy of non-discrimination based on sexual orientation, gender identity and gender expression.

The Executive Office of government must:

- Declare a national policy on sexual orientation, gender identity, gender expression and gender recognition.
- Convene interdepartmental conferences focusing on state policy and ensure inclusion of LBT issues in the official policies and annual planning of national agencies, including: the Departments of Health, Labor, Foreign Affairs, Education, National Defense, Justice and Interior and Local Government; the Philippine Commission on Women; and the Offices of the President.

The Executive Office must:

- Set up pilot structures within state mechanisms to provide resource support for victims and survivors, by: establishing LBT women's community centers; and restructuring existing State mechanisms to accommodate LBT women, such as the establishment of a women's and children's desk within the Philippine National Police and domestic violence desks at public hospitals.

The Legislature must:

- Amend legislation for women to explicitly include sexual orientation, gender identity and expression as well as review and repeal all legislation that discriminates against LBT people. For example, the anti-trafficking and vagrancy laws and laws that limit marriage to different-sex couples should be reviewed and repealed.

The Judiciary must:

- Review Supreme Court jurisprudence to address unequal rulings.

CIVIL SOCIETY

The National Commission on Human Rights must:

- Improve monitoring human rights violations taking place against LBT women;
- Submit and disseminate official reports; and
- Investigate and present its findings on the incidence of violence against LBT women to government and intergovernmental agencies.

The donor community and funding institutions must:

- Provide resources to establish training and counseling programs for LBT women;
- Fund meetings and conferences that address issues facing LBT women;

- Provide assistance and resources for volunteer groups and NGOs that are already providing legal, medical and counseling services for LBT women; and
- Support more research to better understand the situation of LBT women.

Human rights organizations in the Philippines must:

- Establish links with different advocacy groups, including those advocating for LBT rights;
- Identify and build the capacity of LBT organizations at the grassroots level to strengthen their advocacy for LBT people;
- Organize targeted anti-violence campaigns around sexual orientation, gender identity and gender expression; and promote services sensitive to the needs of LBT women, specifically health-care support.

APPENDIX A: GLOSSARY OF TERMS

“**Bakla**” is the most used and most memorable term to denote Philippine queer identity in recent recorded history. *Bakla* denotes the hybrid classification that covers and conflates gender identity and sexual orientation. It is also frequently used as an epithet in political and social discourse to evoke the concepts of cowardice, flightiness, shallowness, incompleteness or conflicting ideas. Other slang terms that are largely similar to *bakla* include the following: *Badaf* (contraction of “*babaedapat*” or “should have been a girl,” and later became *Bading*); *Sward*; *Syoke*; and Third Sex. In the Visayas, the equivalents are *Bayot* (Cebuano for “Woman with a Penis”) and *Agi* (Hiligaynon). There are other terms that became popular and later disappeared or became rarely used: *Talyada*, *Sirena*, *Darna*, *Myla*.

Filipino is the prevalent language used in the Philippines aside from English. Filipino is based largely on the Tagalog language with many borrowed terms from Spanish and English. Many of the respondents in this research used Tagalog-based Filipino and English in Luzon, Cebuano, and *Hiligaynon* in the Visayas while a small number were conducted Cebuano and in minority languages such as *Tausug* in Mindanao.

Gender Expression comprises the set of external characteristics and behaviors one projects in portraying one’s gender identity, which includes dress, mannerisms, speech patterns, physical characteristics, and other acts. Gender expression may or may not conform to norms and stereotypes (Rose, 2003).

Gender Identity is the inner conceptual sense of self as “man”, “woman” or other, as divorced from issues like gender expression, sexual orientation, or physiological sex. It is a subtle and abstract, but extremely powerful, sense of who you *are*, in terms of gender, independent of how you dress, behave, what your interests are, who you’re attracted to, etc. (Reed, n.d.)

LGBT is the acronym for Lesbians, Gays, Bisexual and Transgenders. This term is used to represent non-heteronormative individuals and is slowly gaining ground because of the increasing frequency of activist discourse in mass media.

Sexual Orientation refers to a 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. (Yogyakarta Principles)

Media, politicians and the general public predominantly use **Third Sex** when they refer to

LGBT, which is a source of frustration among modern activists. Despite monumental efforts expended by both activists and LGBT citizens in advocating for the urgent disuse of the term, the average *bakla* on the street would proclaim his/her proud membership of the Third Sex in pageants, TV appearances, and Facebook posts.

Tomboy is the historically predominant term produced by Philippine culture to describe what the public sees as masculine women and also, but less often, to describe women who identify as lesbians. In some ways, the development of the tomboy concept shares similar linguistic meanings and developments as the term *bakla*. Tomboy tends to conflate and hybridize the identities of butch lesbians, FTM transsexuals, and heterosexual women who act butch. Because the idea of feminine lesbians did not have traction in the Filipino psyche in the 20th century, they probably were not included in the tomboy classification unless one's orientation was disclosed to the public. Other terms are *tibo*, *tiboli*, *tibam*, *pars*, soft butch, and hard butch for the butch lesbians and *mars*, femme, and lipstick lesbians for the femme lesbians.

Transpinay means a female human being of Philippine descent who was given a male sex assignment at birth. The Society of Transsexual Women of the Philippines (STRAP) launched the term during the 2008 Manila Pride March. It is a combination of the words transsexual, someone whose gender identity is directly opposite of his/her sex assignment at birth, and *Pinay*, the local term for Filipina, a girl/woman from the Philippines.

APPENDIX B: METHODOLOGY

The Rainbow Rights Project, the project leader in the Philippines, created a country team composed of advocates and researchers sympathetic to the plight of lesbian, bisexual and transgender (LBT) women.

Members of the country team attended the first Asia Activist Institute, convened by IGLHRC from April 13-17, 2010 in Antipolo City, Philippines. The Institute was convened with the primary goal of building the capacity of activists from five Asian countries (Japan, Malaysia, Sri Lanka, Pakistan and the Philippines) to document violence against LBT women. It was during this institute that the objectives and methodology for this project were developed and the definition of violence, discrimination, identity and behavior were operationalized.

The country team, together with members of partner organizations, participated in a human rights documentation workshop on November 6, 2010 at the West Trade Center, Quezon City, Philippines, in preparation for this three-year nationwide documentation project. Professors Beatriz Torre and Eric Julian Manalastas of the Department of Psychology at the University of the Philippines facilitated the workshop, which included a discussion about data collection instruments and protocol. Mock interviews were also conducted to familiarize participants with data collection instruments and processes.

The country team partnered with four LBT organizations in the gathering of data collection from March 2011 to February 2012. Information was gathered from non-heteronormative women who had experienced discrimination and violence. The data-collection protocol included strict compliance with ethical considerations. The country team ensured that the target groups (lesbians, bisexual women and transgender women) and the three main island groups in the country (Luzon,

Visayas and Mindanao) were all represented. The majority of the LBT interviews involved transgender women (58%); about 29% involved lesbians and 9% bisexual women (see Table 1).

TABLE 1: DISTRIBUTION OF INTERVIEWS BY GROUP

GROUP	TOTAL	PERCENTAGE
Bisexual Women	5	8.5
Lesbians	17	28.8
Transgender Women	34	57.6
Others	3	5.1
Total	59	100.0

There was easy access to the network of transgender women, who were receptive to the call for interviews, which led to a greater proportion of transgender women being interviewed. The maximum number of interviews per group was also not set, which might have affected the final distribution of the interviews by group. The small representation of bisexual women interviewed can perhaps be attributed to them having less visibility in the country.

A significant proportion of the interviews were from Luzon (59%), about one-third was from the Visayas (34%), and about 7% were from Mindanao (see Table 2).

TABLE 2: DISTRIBUTION OF INTERVIEWS BY MAJOR ISLAND GROUPS

ISLAND	FREQUENCY	PERCENTAGE
Luzon	35	59.3
Visayas	20	33.9
Mindanao	4	6.8
Total	59	100.0

Geographic and financial constraints contributed to the lesser representation of Mindanao. The other interviews not included in the analysis were from Mindanao. Three LBT interviewees were categorized as “Others,” which included a transgender man, a lesbian group interview with three people from Mindanao, and a person who identified as male, all of which

were eventually not included in the analysis. These interviews breached research protocol, which said interviews should be conducted with only individual interviewees and with respondents who identified as women. The country team did not want to offend the sensibilities of transgender males; hence the interview with the transgender man was conducted but not included in the analysis of data from the pool of women-identified respondents. The LBT interviews were recorded and transcribed, and interviews conducted in local languages were translated into English.

Data collection on non-heteronormative women was conducted in tandem with the data collection on various stakeholders. Information from stakeholders was gathered to document the services and interventions they provide for LBT women, as well as their knowledge of, and attitudes towards, LBT women. It was also aimed at collecting information on the existing laws and policies on sexual orientation and gender identity/ expression. Similar to the data collection on LBT women, part of the data collection protocol for stakeholders was to ensure representation from different types of stakeholders (including, but not limited to, civil society organizations, state sector representatives and medical/health providers) and from the three main island groups in the country (Luzon, Visayas and Mindanao).

More than a quarter (25%) of the 46 stakeholder interviews involved representatives from Coos, which included LGBT organizations, women’s groups, human rights NGOs and reproductive health advocates, 15% involved state sector representatives, including those from the legislative branch, national government agencies, human rights organizations and the state university. Medical and health providers comprised almost one-fifth (20%) of those interviewed and included psychiatrists, doctors, nurses and guidance counselors. A group of miscellaneous stakeholders (39%) included educators, religious leaders, employers and people working in the media (see Table 3). All interviews were recorded, transcribed and translated into English when required.

TABLE 3: DISTRIBUTION OF INTERVIEWS BY TYPE OF STAKEHOLDER

STAKEHOLDERS	FREQUENCY	PERCENTAGE
Civil Society Organizations	12	26.1
State Sector Representatives	7	15.2
Medical/ Health Providers	9	19.6
Miscellaneous (e.g. educators, religious leaders, employers and media workers)	18	39.1
Total	46	100.0

Secondary data was also gathered from different libraries, resource centers and the Internet, and included news clippings, press releases, books and magazines. Secondary information on the experiences of LBT women, laws on sexual orientation and gender identity, available services and interventions and pro and anti-LBT women activities were used to provide context and to enrich the analysis.

The country team formed a seven -member group responsible for the processing and analysis of the collected data. This team took part in an online training on the processing of the LBT women interviews, which was conducted by representatives from IGLHRC and consultants from Strength in Numbers (SiNGC) on March 12, 2012. The training provided capacity building for the qualitative coding of data (including the creation of transcript summaries, the collection of common themes, and the definition of key qualitative terms and concepts). Common themes for the Philippine data were collected from the available transcripts and sent to IGLHRC for consolidation.

A total of 46 transcripts were sent to IGLHRC and SiNGC for data processing. Atlas.ti software was used to process the transcripts (see Table 4). Six interviews (three lesbians and three transgender women) were not processed because the data was not translated. The country team decided to exclude seven interviews that did not adhere to the data-collection protocol. The answers of respondents from four interviews were deemed to have been heavily influenced by the interviewers and other people who were present. As stated earlier, three interviews were either not from LBT women or were not one-on-one interviews.

Two members of the country team took part in an online training on the processing and analysis of data related to stakeholder interviews on April 26, 2012. The training was held to equip the team with the necessary skills to undertake stakeholder data analysis. A total of 46 stakeholder interviews (see Table 3) were processed and included in the analysis.

Lastly, members of the country team participated in the 2nd Asia Activist Institute, convened by IGLHRC on June 1-3, 2012, at Antipolo City, Philippines. Activists from Japan, Malaysia, Sri Lanka, Pakistan and Philippines attended the Institute. The Institute provided an orientation on the coded data and demonstrated different data analysis techniques in preparation for the report-writing phase of the project.

TABLE 4: FREQUENCY OF INTERVIEWS BY DATA PROCESSING STATUS AND GROUP

GROUPS	PROCESSED	NOT PROCESSED	NOT INCLUDED	TOTAL
Bisexual Women	5	0	0	5
Lesbian	10	3	4	17
Transgender Women	31	3	0	34
Others	0	0	3	3
Total	46	6	7	59



SRI LANKA





"NOT GONNA TAKE IT LYING DOWN"

Experiences of Violence and Discrimination
as Told by LBT Persons in Sri Lanka

WOMEN'S SUPPORT GROUP

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INTRODUCTION

From 2010 to 2012, the Women's Support Group (WSG), a Colombo-based non-governmental organization (NGO) providing support and advocacy for lesbians, bisexual women and transgender people (LBT),² documented experiences of violence and discrimination specific to LBT people in Sri Lanka. This initiative, titled the Asia Action Research to Address Violence Against Non-Heteronormative Women and Transgender People on the Basis of their Sexual Orientation, Gender Identity or Gender Expression, was part of a five-country project spearheaded by the International Gay and Lesbian Human Rights Commission (IGLHRC).

The WSG carried out 33 qualitative interviews with LBT people and 51 qualitative interviews with related stakeholders (i.e., lawyers, doctors, mental health professionals, media representatives, employers, religious leaders, representatives of educational institutions, NGOs, and state employees). Questions were structured around the following themes: emotional violence, physical violence, sexual violence, intimate partner violence, workplace discrimination, state violence, access to redress and coping mechanisms.

The interviews provided crucial insights on LBT human rights issues, which had never before been documented in Sri Lanka.

One key research finding is that Sri Lankan lesbians, bisexual women and transgender people most commonly experience emotional violence as a result of their sexual orientation, gender identity or gender expression (SOGIE). All 33 LBT interviewees had experienced some form

"I think the biggest discrimination for me was from my family. Emotionally and verbally they have discriminated [against] me - their denial that I am a lesbian and the refusal to accept anything other than me being with a man as being ok... They at best hide my sexuality or refuse to acknowledge it. So the problems are actively from them and it continues still."

— Mallika¹, early 40s, identifies as a femme lesbian

"My partner's family forcibly tried to give her pills and medicine to cure her. They tried very hard to change her into a heterosexual... [T]wice she was subjected to electric shock therapy."

— Roshmi, 39 years old, identifies as a lesbian

¹ All names have been changed to maintain anonymity and confidentiality.

² For the purpose of this research we will include both transgender men and women. The acronym 'LBT' will be used as an abbreviation for Lesbian, Bisexual and Transgender. This umbrella term is meant to include lesbians, bisexual women, transwomen (male-to-female transgender persons) and transmen (female-to-male transgender persons).

of emotional violence, including: non-verbalized/silent contempt, invisibilization, emotional manipulation, gender norm enforcement, religious condemnation, invasion of privacy, restrictions on socialization, neglect, severing of relationships between family and friends and controlling behaviour.

A second key finding is that, as almost all interviewees admitted, family members are the main perpetrators of emotional violence. In some cases, although interviewees were not slow to state that they had experienced emotional violence from family members, the term “perpetrator” was not one they readily associated with or wanted to associate with a family member – even in the context of the narrative of violence. The research sheds light on the reasons for this reluctance, which in itself is a potentially significant aspect of the findings.

These findings suggest that Sri Lankan women, while achieving high on development indicators like literacy and education, are still subjects of a conservative social environment where patriarchal authority and heteropatriarchal norms are reinforced. In this society, heterosexual marriage is encouraged, divorce and separation discouraged, and family violence as well as partner violence is invisibilized. Given that this environment actively discourages female independence, especially sexual autonomy and gender difference, and limits women’s access to and exposure in the public sphere, the private space of the family is a primary locus of the control of women – perhaps the most oppressive institution for them. For LBT persons, these circumstances are compounded by the fact that they have no other forms of support. For example, they may not be able to request help from friends and colleagues, and cannot approach religious communities or government institutions such as the police and even women’s sheltering services.

In addition to emotional violence, over two-thirds of interviewees (26 out of 33) reported physical violence. The project sought information on experiences of physical violence in connection with three aspects: coming out experiences; external reactions to a respondent’s non-conformity in

terms of gender and sexual orientation; and in relation to being in queer (see Glossary) relationships. Interviewees were questioned specifically on which acts constituted physical violence for them. The interviews also revealed that more than half (18 out of 33) had experienced sexual violence. Both forms of violence (physical and sexual), were linked to their sexual orientation, gender identity or gender expression.

A staggeringly high number of interviewees (31 out of 33) reported the impact of the violence on their mental health; amongst the mental health issues cited were depression, anxiety, anger, frustration, and fear arising from actual experiences of violence and anticipation of further violence. Nearly two-thirds of the interviewees (20 out of 33) chose not to disclose their sexual orientation to anyone for fear of rejection from society, friends and family. Self-harming behaviour was reported by 20 respondents, including an alarming one third of the interviewees (11 out of 33) reporting attempted suicide. This fact was reflected in Sri Lankan newspaper reports of female couple suicides, as the WSG has observed.³

The stakeholder interviews provided an in-depth understanding of the intensity and forms of anti-gay attitudes and myths prevalent in sections of contemporary Sri Lankan society. These interviews also helped identify potential allies across a range of professions, including medicine, mental health, education, religion and media.

For instance, a mental health professional who

3 In July 2005, Deepika and Chanika, two 15-year-old girls, hugged each other and jumped in front of an oncoming train in the Gampaha District (reported in *Lankadeepa* – 22/07/2005); in August 2002, 18-year-old Sujani and 16-year-old Anoma hanged themselves from a rubber tree in the Matale District. A suicide note left behind read, “Since we cannot live together, we will die together” (reported in *Divaina* – 23/08/2002); in October 2001, the bodies of 30-year-old Nandani and 21-year-old Shanika, hands tied together by a piece of cloth, were found washed up on the beach in the Galle District. There were no signs of murder, rape or sexual abuse. Police investigations revealed love letters that the young couple had written to each other (reported in *Lankadeepa* – 05/11/2001).

had worked with many LBT people, especially in the area of transgender issues, was aware of the problems in the Sri Lankan mental health system and the scarcity of specially trained professionals working with LBT individuals. She identified the need for more clinical psychologists to work with LBT individuals and also stressed the need to educate the public on issues relating to sexual orientation, gender identity and gender expression. She said, “People have a right to live this particular way as long as they are not into harmful behaviours [sic].”⁴



DEDICATION

This study is dedicated to Sunila Abeyssekera (1952 – 2013), a founding member of the Women’s Support Group (WSG), but most importantly, a mentor and inspiration to all of us who continue to advocate for the right to be free from violence and discrimination based on sexual orientation, gender identity and gender expression.

ACKNOWLEDGEMENTS

The Women’s Support Group would like to thank all the respondents who willingly shared their stories of despair, hope, courage and resilience in order to make this research possible. We are also grateful to all the stakeholders who participated in this study.

The WSG wishes to especially thank the International Gay and Lesbian Human Rights Commission (IGLHRC) for providing guidance and support throughout this research.

Finally, we would like to express our sincere gratitude to our funders, the Global Fund for Women, IGLHRC and South Asia Women’s Fund, who made this possible.

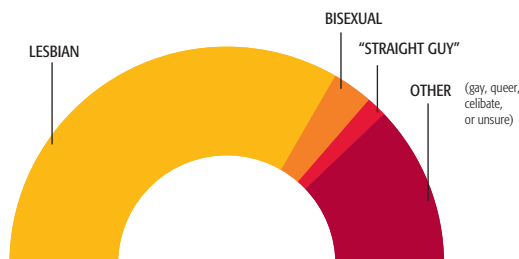


⁴ Interview with Mental Health Professional, Women’s Support Group, Sri Lanka, July 14, 2011.

INTERVIEWEE DEMOGRAPHICS

SRI LANKA

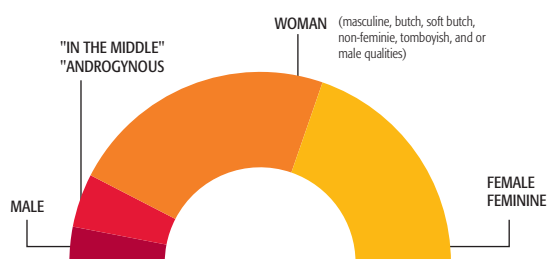
SELF-IDENTIFICATION: SEXUAL ORIENTATION



Sexual Orientation: Of the 33 LBT interviews conducted by the WSG, 22 were with self-identified lesbians, two with bisexual women, and one with a person who saw himself as a “straight guy.” The remaining eight interviewees varied in defining their sexual orientation – as gay, queer⁵, celibate, or unsure. Some preferred to simply say they “liked women” while others resisted labelling their sexual orientation.

SRI LANKA

SELF-IDENTIFICATION: GENDER IDENTITY OR EXPRESSION

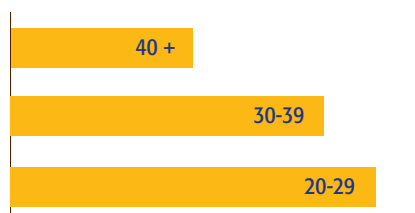


Gender Identity or Expression: In terms of gender identity, two of the interviewees identified as male; three identified as neither male or female but preferred to refer to themselves as being “in the middle” or “androgynous;” 15 identified as female, woman, and/or being feminine; and 13 identified as women, but were quick to qualify that they were either masculine, butch, soft butch, non-feminine, tomboyish, and/or had male qualities.

⁵ For this research, we use the term ‘queer’ to represent people with non-conforming sexual orientation, gender identity and gender expression. One of the participants used the term “queer” to identify herself as it provided a broader identity than the term “lesbian.”

SRI LANKA

AGE RANGE

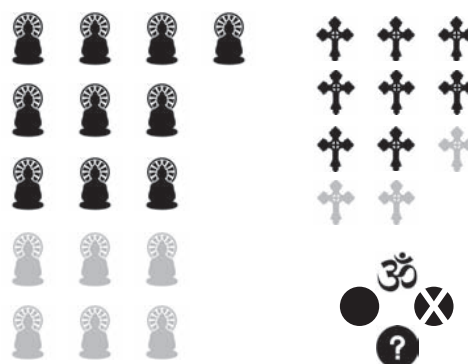


Age: Fourteen interviewees fell into the age range of 20 to 29 years; twelve interviewees were between 30 and 39 years; and seven were above 40 years old.

Ethnicity: In terms of ethnicity, the sample population had an over-representation of Sinhala people (19); nine interviewees of mixed ethnicity (Sinhala/Burgher or Sinhala/Tamil); three who identified as Burghers; and two Tamils. Similarly the number of Tamil interviewees was low, despite recruitment efforts.

SRI LANKA

RELIGIOUS IDENTITY



Faith: Almost half of the number of interviewees (16) had been born into Buddhist families, but only ten of the total sample claimed to be practicing Buddhists. Similarly, of the thirteen interviewees who had been born into Christian families, only eight were practicing Christians. The others were Hindus, atheists, agnostics or did not identify with any religion. Recruitment was unsuccessful in the case of Muslim respondents.

Education: Fourteen interviewees had completed tertiary education, eight interviewees held an undergraduate degree, and eleven had postgraduate qualifications.

Employment: Of the 33 respondents, 30 were employed in the formal sector. In terms of annual income, four interviewees earned below USD \$3,000; nine earned between USD \$3,000 and 5,000; seven earned between USD \$5,000 and 10,000; and eight earned more than USD \$10,000. Two interviewees did not have a fixed income.

Stakeholder Interviews: Of the 51 stakeholder interviews, seven were conducted with people who worked in state agencies; eleven with human rights advocates (including lawyers and women's rights activists); seven with service providers (including mental health and medical health professionals); and 26 with employers and representatives of media, religious and educational institutions. Time constraints permitted the analysis of only 30% of all stakeholder interviews (i.e., 16 stakeholder interviews), and this limitation may affect the conclusions in this chapter. However, participant recruitment was designed to capture a cross section of stakeholders, including at least one person from each sub-category (i.e., educationists, employers, media, religious). All stakeholder interviews were conducted in either English or Sinhala, as those of Tamil ethnicity preferred to speak in English.

The stakeholder interviews illuminated negative social attitudes and myths about homosexuality in Sri Lanka, providing useful insights for advocacy strategies and service improvement. The most common response by stakeholders across the spectrum was the conflation of homosexuality with paedophilia, even in instances where such beliefs contravene professional training, as stated by Dr. Lakruwan, a medical health professional:

A homosexual person also cannot say who he is [be open about his sexuality] because it is looked upon with disgust. So all this happens in secret... [and as a result] they [gay men] also go after small children.⁶

6 Interview with Dr. Lakruwan, Medical Health Professional, Women's Support Group, Sri Lanka, August 13, 2011.

Another common response was the association of homosexuality with HIV/AIDS/STDs. Mohomad, a Muslim Maulavi (religious leader of Islam) says:

God has made 100% sure that if such things exist between men or between women... unidentifiable diseases that have no medicine will be spread. The Quran mentions that those who approve of such things will die of humiliation and blame.⁷

A third response was that homosexuality was inappropriate and ran counter to the existence of cultural and religious sensitivities in the country according to Menika, a school principal who says that she "...cannot say that it is appropriate when we consider our surroundings" (referring to Sinhala and Tamil cultures).⁸ LBT people were also viewed as "people who have some kind of sexual or psychological disorder, who cannot live in a normal way. Since they have no other choice, they behave as homosexuals."⁹

However, there is little basis for this perception in the dominant cultural scripts. For instance, in Buddhism, the country's official religion, which is practised by a majority of Sri Lankans, there is no documented evidence of the Buddha professing any views against homosexuality.¹⁰ The *Vinaya* (monastic rules for the religious order) holds that monks and nuns are not permitted to penetrate any bodily orifices with their sexual organs; it does not make a distinction between homosexual and heterosexual activities, and the rule is only for those who have taken religious vows.

7 Interview with Mohomad, Muslim Maulavi, Women's Support Group, Sri Lanka, August 1, 2011.

8 Interview with Menika, School Principal, Women's Support Group, Sri Lanka, June 16, 2011.

9 Interview with Sudath, media representative, Women's Support Group, Sri Lanka, August 9, 2012.

10 Bellanvila Sudaththa Thero and Cecil J. Dunne, "Homosexuality, Buddhism and Sri Lankan Society," *Groundviews*, <http://groundviews.org/2007/08/28/homosexuality-buddhism-and-sri-lankan-society/>.

HUMAN RIGHTS CONTEXT IN SRI LANKA

Sri Lanka is a constitutional multiparty republic, currently governed by its President, HE Mahinda Rajapakse, who was re-elected to a second six-year term in January 2010. Sri Lanka witnessed internal armed conflict for over 30 years in which the Government of Sri Lanka (GOSL) engaged in a civil war with the Liberation Tigers of Tamil Eelam (LTTE) who were fighting for a separate state in the North and the East of the island. This conflict claimed the lives of more than 70,000 Sri Lankans and displaced thousands.¹¹ The eventual military defeat of the LTTE in May 2009 ended in a bloody battle, resulting in 40,000 Tamil civilian deaths and nearly 60,000 Tamil civilians injured. The Lessons Learnt and Reconciliation Commission (LLRC), appointed by the President in May 2010, is defined as a national accountability mechanism. However, the LLRC does not meet international standards, especially in the area of accountability, and is considered deeply flawed by international and intergovernmental human rights organizations for failing to investigate the systematic violations of human rights that occurred during the internal conflict.¹² The failures of the LLRC are indicative of a deeper lack of political will to address human rights violations more generally.

In the aftermath of the conflict, the country still faces the challenge of building a just and peaceful society that recognizes and respects the identities and rights of all people, including women. There have been reports of major human rights violations – unlawful killings, disappearances, arbitrary arrests, torture and gender-based violence – committed against civilians, human rights defenders, media personnel

and political figures. Such human rights violations, attributed to security forces and government-allied paramilitary groups, continue to be reported.¹³ The number of prosecutions remains low and convictions are even lower, especially in cases where state officials stand accused. This reflects an overall state of impunity in the country which is characterized by lengthy pre-trial detention, denial of fair trial, lack of independence of the judiciary, lack of accountability measures for conflict-related crimes, lack of administration of the rule of law, and lack of political will. Reports also show restrictions of basic human rights, including the freedom of expression, freedom of assembly, and freedom of association and movement.¹⁴

Overall, the State's reaction to any form of dissent has been contempt or denial. For instance, during 2011 and immediately thereafter, when a United States resolution on Sri Lanka was pending before the United Nations Human Rights Council scheduled for March 2012, Sri Lankan human rights defenders faced constant threats and experienced severe hardship.¹⁵ In many instances, journalists, human rights defenders and those who criticise the government have been labelled as "Tigers" (alleging that they support the LTTE), terrorists, separatists or traitors. This reaction has had a tremendous impact on the work of human rights defenders. They have been compelled to confine their work to those issues that the government does not perceive as "sensitive."¹⁶

In terms of a broad range of human rights concerns, journalists face censorship and often

11 "Q & A: Post-war Sri Lanka," BBC News, September 20, 2013, <http://www.bbc.co.uk/news/world-south-asia-11393458>

12 A/HRC/22/38, Human Rights Council, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-38_en.pdf; "Sri Lanka: Report Fails to Advance Accountability," Human Rights Watch, December 16, 2011, <http://www.hrw.org/news/2011/12/16/sri-lanka-report-fails-advance-accountability>

13 "Human Rights Report, Sri Lanka," US Department of State (2011), accessed on October 11, 2012, <http://www.state.gov/j/drl/rls/hrrpt/2011/sca/186475.htm>.

14 A/HRC/22/38, Human Rights Council, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-38_en.pdf

15 "Joint Statement by Sunila Abeysekara, Nimalka Fernando and Pakiasothy Saravanamuttu," March 23, 2012, <http://www.scribd.com/doc/86440203/joint-statement-sunila-abeysekara-nimalka-fernando-and-dr-paikiasothy-saravanamuttu>.

16 For example, any issues dealing with the conflict or in relation to post conflict human rights violations against the Tamil minority are deemed "sensitive" issues by the government.

life-threatening risks.¹⁷ A large number of Tamils remain in detention without being formally charged. In addition, there is a lack of disaggregated data in relation to ethnicity as this information has not been provided by the authorities, and non-governmental organizations can merely provide varying estimates.

A distressing development has been the emergence of extremist religious intolerance fuelled by a group of militant Buddhists priests.¹⁸ New forms of media such as Twitter and Facebook have been used to spread the groups' intolerance of Muslims and instil a "fear psychosis" among the greater population. Many of these militant groups speculate that the last concluded census in 2011 showed a rapid growth in the birth rates of Muslims, which they identify as a potential threat to the Sinhala ethnic group. Although the activism of these militant priests has largely targeted people of minority ethnicities and religions, they enjoy the tacit support of the government in spreading majority Sinhala and Buddhist propaganda. Their fear of Muslims outnumbering Sinhalese people in Sri Lanka serves as the impetus for advocating that Sri Lankan laws be changed to permit a Sinhalese man to wed five women in order to propagate the Sinhala race.¹⁹ Reportedly a government communiqué has been issued to state hospitals to stop implementing and administering all forms of voluntary, irreversible family planning methods, namely Ligation and Resection of Tubes (LRTs) and vasectomies, unless done for medical purposes.²⁰

NGOs working in the areas of contraception, sexual health and family planning have reported being instructed by the government to cease their outreach work in this field.

The independence of the Police Commission, the Human Rights Commission and the Judiciary was compromised by the 2010 passage of the 18th Amendment to the Constitution, which resulted in presidential appointments being made to the related public institutions. Previously, the 17th Amendment to the Constitution (and Section 2 of the Act) provided that the members of the Human Rights Commission would be appointed by the President on the recommendation of the Constitutional Council. This 18th Amendment to the Constitution, which came into effect on 9 September 2010, established a Parliamentary Council comprised of the Prime Minister, the Speaker of the Parliament, the Leader of the Opposition, a Member of Parliament nominated by the Prime Minister, and a Member of Parliament nominated by the Leader of the Opposition. The President now has to "seek the observations of a Parliamentary Council" (as opposed to obtaining the Council's approval) in making appointments to the Human Rights Commission.

This situation of general impunity and lack of judicial independence has made LBT people in general more vulnerable and invisible. Their vulnerability and invisibility are compounded when sexuality intersects with membership in another disadvantaged group. For example, many lesbian, gay, bisexual and transgender (LGBT) groups report a lack of Tamil membership. In short, it is clear that the human rights crisis facing the country creates a complex context in which LBT people find it even more difficult to effectively advocate for their rights.²¹⁹

17 "VIDEO: I chased Poddala, warning to 'traitors' – Mervyn," Truth First (March 2012), accessed September 25, 2012, <http://www.adaderana.lk/news.php?nid=17473&mode=beauti>.

18 "Bodu Bala Sen and Buddhism's militant face in Sri Lanka," *Groundviews*, January 15, 2013, <http://groundviews.org/2013/01/15/bodu-bala-sena-and-buddhisms-militant-face-in-sri-lanka/>; "Bodu Bala Sena a Threat to Sri Lanka's Future," *Groundviews*, March 19, 2013, <http://groundviews.org/2013/03/19/bodu-bala-sena-a-threat-to-sri-lankas-future/>; "The Muslims are the New Tamils," *Lanka Standard*, January 27, 2013, <http://www.lankastandard.com/2013/01/the-muslims-are-the-new-tamils/>

19 "Bodhu Bala Sena Wants Law Changed to Permit a Sinhalese Man to Marry Five Wives to Propagate the Sinhala Race," *dbsjeyaraj.com*, January 23, 2013, <http://dbsjeyaraj.com/dbsj/archives/15219>

20 "Govt Bans LRT on Women and Vasectomy on Men After

Bodhu Bala Sena Protested Against Birth Control to Protect Dwindling Sinhala Race," *dbsjeyaraj.com*, February 24, 2013, <http://dbsjeyaraj.com/dbsj/archives/17118>.

21 As in other South Asian countries, politicians and other public figures in Sri Lanka often dismiss same-sex relations as a Western way of life in order to justify the continued criminalization of sexual activities between consenting adults even in private spaces. For example in August 2008, the Sri

MANIFESTATIONS OF VIOLENCE BY NON-STATE ACTORS AND PRIVATE INDIVIDUALS

Emotional Violence

According to the definition of emotional violence in the research methodology, emotional violence is a term that is often inter-changeably used with mental and psychological abuse. Some interviewees might be more comfortable calling it a violation of their spirit or dignity. What is important in this research are the behaviours or actions that are experienced as emotionally / psychologically / mentally / spiritually violating. The types of actions or behaviours that constitute emotional abuse in this research are: verbal abuse (insults, taunts, swearing, put downs / personally demeaning comments, allegations of abnormality); threats (to harm self or others, to abandon, evict, imprison, disclose sexual identity to others, etc); controlling actions (for example, restricting socialising with family / friends / neighbours; invading privacy, entering personal space); silent hostility (for example non-verbal behaviours that express contempt for, denial of and/or non-acceptance of gender identity and sexual expression), neglect,

Lankan government hosted the 8th International Conference of AIDS in the Asia Pacific (ICAAP). In spite of the government taking this initiative to host this event which included many sessions on sexuality, sexual health and the rights of sexual minorities, at the end of the conference in response to a comment raised on the unavailability of condoms for participants of the conference by the ICAAP rapporteur, the Minister of Health is quoted as replying "I don't want people to think I brought all of these people here to promote lesbianism and homosexuality. There are many nice women and handsome men in Sri Lanka. People in South Asia practice good sexual behaviour with single partners. When the Western world was living in the jungles, we were leading a civilised life." See M. Fernando, "Vagrant Voices," *Himal South Asia*, Vol. 21 (3), (2008), accessed on February 8, 2013, <http://himalmag.com/component/content/article/1010-vagrant-voices.html>.

(for example, withholding financial support, denying human contact).

All LBT people interviewed for this study reported experiencing emotional violence. As mentioned in the introduction, LBT people experience this violence more intensely due to lack of a support system. Given that it is customary for Sri Lankans to live with their families until marriage (and at times, even in the post-marriage period), this domestic set up can add to the pressure on LBT persons who are already facing emotional violence. It is not uncommon therefore for lesbians, bisexual women and transgender people to use employment or education as a "reason" to leave home (see the section on "Active/Activist Responses" for a more detailed account of this).

There are different triggers to when emotional violence occurs. However, emotional violence was a common occurrence mostly in connection with the discovery of an individual's sexual orientation or gender identity or in relation to an individual's "coming out" experience (where a person revealed her sexuality or gender identity). The gender expression of some of the more boyish respondents was also a cause for emotional abuse.

In a few cases, interviewees experienced violence on the grounds of being women and being queer. In such cases, when it was not just being queer but being a *woman* who was queer that triggered emotional violence, the data showed the intersections between discrimination against women, homophobic and transphobic violence.

Who perpetrates emotional violence varies. Often, the perpetrators were the respondent's family members or the respondent's partner's family members. In some cases, the violence was perpetrated by an ex-partner, an ex-partner of a current partner, or a peer. A few interviewees had experienced violence or the threat of violence from strangers.

The ways that LBT individuals experience the harassment, humiliation, power and control associated with emotional violence were many.

This violence primarily involved an invasion of privacy (more than three fourths, reported by 26 of

the 33 respondents); non-verbal or silent contempt and hostility (more than half, reported by 19 of the respondents); and emotional manipulation (more than half, reported by 18 respondents).

More than half, (18 respondents) reported experiencing restrictions on socializing, such as their phone calls and letters being monitored; having 'curfews' imposed on them when their sexuality became suspect; being chaperoned when leaving the house; and being confined to the house due to their sexual orientation or gender identity. Approximately one third (13) had been forced to end their same-sex relationships, and one third (13) believed that their sexual orientation or gender identity was met with silent hostility or was invisibilized in one way or another (e.g., they were treated as if they were not in the room and/or were spoken about in the third person).

Interviewees reported facing a high degree of peer teasing that often escalated into verbal harassment and bullying, in addition to intentional emotional abuse from peers, teachers, work colleagues, supervisors, friends and state actors.

DKS, a 28-year-old feminine lesbian, lives with her soft butch partner in a suburb of Colombo. She spoke of their experience of facing prying eyes and contempt at a place of worship. She said:

I go to church and then I stand there and I think...you know, all these people are staring at us, they clearly know that we're a gay couple or we're a little out of the ordinary, and I am sure some of them think, 'What the hell are they doing here?'²²

One interviewee spoke of the non-verbal contempt directed towards her by her previous partner's parents. Chandani is 39 years old, lives in Colombo, and identifies as a feminine/soft butch lesbian. She spoke about her ex-partner's family, who felt that she was "spoiling" (ruining) their daughter and responded by rendering her invisible. She said:

22 Interview with DKS, Women's Support Group, Sri Lanka, 18 September 2010.

That has happened to me a lot ... [T]he parents refused to acknowledge me at all, even though I had dinner with them.²³

Twenty-one-year-old Dhammi, a Sinhala Buddhist and a resident of a Colombo suburb, does not want to use a specific term to identify her sexual orientation; instead, she prefers to "stay with both" and describes her gender identity as being "in the middle." Dhammi spoke about how her brother had emotionally manipulated or blackmailed her once he found out that she was a lesbian. She said, "He told me that he will not speak to me if I continued my relationship with my girlfriend. He also threatened to inform our parents about it."²⁴

Chamila is 36 years old and lives with her parents in a Colombo suburb. She identifies as a lesbian and prefers dressing in masculine attire. She referred to an incident where her mother had taken her to a mental health professional to try and "cure" her gender non-conformity and her lesbianism. She said:

[My mother] said she was taking me to the doctor's for my headache. I was wondering what headache I had... I didn't say anything then, but later I realized that she had taken me to a mental doctor [psychologist].²⁵

Verbal Abuse as Violence

Verbal abuse, a specific means of belittling and demeaning someone through a barrage of insults, derogatory comments and hate speech, was a common experience across all age groups. Perpetrators of verbal abuse ranged from family members to neighbours, other members of the LGBT community, ex-partners, employers and prospective employers.

23 Interview with Chandani, Women's Support Group, Sri Lanka, 17 November 2010.

24 Interview with Dhammi, Women's Support Group, Sri Lanka, 19 January 2011.

25 Interview with Chamila, Women's Support Group, Sri Lanka, 8 August 2011.

Kuma is 47 years old and lives in a suburb of Colombo. She identifies as a lesbian and says she prefers men's casual wear. She spoke to us about the street-based verbal harassment she faced as a result of her masculine gender expression. She said:

Once when I was walking in Pettah with a girl I was holding her hand, honestly because she was my friend and I didn't want her to get lost in the crowd. Then I heard one guy say, 'Hey *machang*,²⁶ I haven't had an *Aappa*²⁷ in a long time, hope I get one today.'²⁸

Chandani spoke about a specific incident where she and her partner at the time were verbally abused by some neighbours. She said:

I was seeing this girl, and I went to her house, and it was late at night, maybe eleven or twelve [midnight] and we went into her house. As soon as we shut the gate, some guys from the top of the road came and banged on her gate and started shouting *Aappa, Aappa* at us.²⁹

Some individuals interviewed for this project reported that because of their sexual orientation or gender expression, they were perceived as "sick" and in need of a "cure."

For instance, Skinner is 34 years old and lives in Colombo. Biologically female, he describes his sexual orientation and gender identity in two words: "straight guy." He said, "If someone finds me odd, you know, they'd say names. I've been called *ponnaya*,³⁰ or they would say, 'is this a man or woman.'"³¹ His mother

has been forcibly taking him to religious/medical men. He said:

Sri Lankan Buddhists are like 90 per cent Hindus, and they all go to these places – you know – fortune tellers and horoscope and stuff like that, and they also have another person, or the same person, giving Ayurvedic medicine [herbal medicine] at the same place. So I was taken to that place last month also.³²

Finally, fourteen interviewees said that their sexual orientation or gender identity was revealed without their consent to other people such as friends, families, the public-at-large (i.e., through media), other students at education institutes, colleagues, and unknown bystanders, resulting in their being made more vulnerable to the possibility of losing employment, family support, housing and more.

A total of 21 interviewees reported being verbally threatened with personal harm or harm to loved ones. The verbal threats were communicated directly to the victims or to someone associated with the victims. Physical violence such as slapping and punching accompanied verbal threats in fifteen cases.

Twenty-nine-year-old Anu, a Tamil bisexual woman, explained to us that she has experienced threats from "people who say that they will castrate [my] friends. That they would beat us up with hockey sticks, set us on fire, those kinds of things have been told."³³

Chamila said that her partner's family had neither met her nor said anything directly to her, "but apparently they have said [to my partner] that if they meet me they will slap me."

In July 1999 when the Women's Support Group announced its intention of holding a conference for

26 *Machang* – Colloquial Sinhala term for mate/friend/buddy

27 *Aappa* – Sinhala derogatory slang for lesbian. Also a bowl shaped pancake made of rice flour that is 'usually consumed for breakfast or dinner.

28 Interview with Kuma, Women's Support Group, Sri Lanka, May 10, 2011.

29 Interview with Chandani, Women's Support Group, Sri Lanka, November 17, 2010.

30 Sinhala slang for effeminate man.

31 Interview with Skinner, Women's Support Group, Sri Lanka,

October 7, 2011.

32 Interview with Skinner, Women's Support Group, Sri Lanka, October 7, 2011.

33 Interview with Anu, Women's Support Group, Sri Lanka, May 13, 2011.

lesbians, it was met with fierce public opposition. One of these protests came in the form of a letter to the editor, published by the English language newspaper, *The Island*, which went so far as to advocate the rape of women attending the conference by a team of convicted rapists. When a complaint was filed against the newspaper, the Press Council of Sri Lanka defended the newspaper and condemned lesbianism as “sadistic and salacious.”³⁴

Violence of Cultural Norm and Gender Norm Enforcement

Twelve out of 33 interviews highlighted the constant pressures that butch lesbians and transgender people face in having to perform and live according to culturally expected gender norms—from being forced to marry, to having to wear particular clothes and maintaining certain hairstyles—all of which were experienced as psychological and emotional violence. Cultural and gender norm enforcement was also experienced as violence when interviewees were quizzed about their gender identity when using public toilets. Similarly, some interviewees were forced to keep their sense of self a secret and not look “too gay” in order to keep the family reputation intact. Some interviewees also spoke of being denied jobs or promotions on the basis of their gender expression – “not looking feminine enough” – and losing employment because their identity cards did not match their appearance.

Physical Violence

Interview analysis established a crucial finding, chiefly that the family and domestic space were two key (related) factors that, first, shaped how LBT people viewed physical violence against them, and, second, whether or not they reported the violence. (For more information about report-

ing violence, see the section on Access to Redress in this chapter.)

Twelve out of 33 interviewees spoke of on-going physical violence in their lives.³⁵ Twenty-six out of 33 interviewees shared stories of battery.

Perpetrators included immediate family members, strangers, peers, partners, ex-partners and neighbours. Significantly, twelve such incidents were cases of partner violence.

DKS recalled an incident where she was at a nightclub dancing with her partner. She said:

You know people generally tend to stare anyway, when we dance there...and this guy actually, like, came, you know, and stepped on my foot or rubbed shoulders with me...and I think he did it on purpose because I think he was quite tickled that I was dancing with a girl that looked like a guy ... I think he wanted to start a fight, because my partner and I looked gay.³⁶

Thirty-four-year-old Sandra identifies as a lesbian/dyke and views herself as a “masculine female.” She spoke about being accosted by a group of strangers at the car park of a popular nightclub in Colombo because they had noticed her dancing with a girl. She said:

I remember two guys holding me from my shoulder, pinning me down from my shoulder against the wall and hitting me in my stomach. I remember breaking loose, hitting one guy in the face, and I cracked his lip and that’s what got them to go, ‘Whoa! You know, she’s not gonna take it lying down.’ ... When they knew I

34 M. Fernando, “Vagrant Voices,” *Himal South Asia*, Vol. 21 (3), (2008), accessed on February 8, 2013, <http://himalmag.com/component/content/article/1010-vagrant-voices.html>.

35 During the interviews, if there were any interviewees who were either experiencing ongoing violence or who were feeling troubled/depressed after the interview, the researchers conducting the interviews were advised by the WSG to offer the name and number of a designated therapist who would be available to meet with any of the respondents.

36 Interview with DKS, Women’s Support Group, Sri Lanka, September 18, 2010.

was not going to stop fighting back, they ran off and I just got into a *tuk tuk*.³⁷

Chamila spoke to us about how she was beaten by her father at age 25 when a former partner, upset by the breakup, disclosed Chamila's sexual orientation to Chamila's family.

Sexual Violence

Interview data revealed that 18 out of 33 interviewees had faced some form of sexual violence. Experiences of sexual violence ranged from rape to sexual assault. Family members, friends, employers or superiors, unknown persons and colleagues were the perpetrators.

To threaten someone with rape is to make someone feel unsafe in their own body, in their most fundamental and intimate sense of self. For instance, Roshmi is a 39-year-old, lesbian-identified woman who currently lives with her partner in a suburb in Colombo. When she and her partner were living in the North Central Province, she said, "Even the neighbours who were friendly towards us had said they would forcibly rape us," once they found out that they were a lesbian couple.³⁸ Even though this threat was not carried out, Roshmi and her partner lived in constant fear and were eventually forced to move to Colombo for their own safety.

LBT people were also viewed as "people who have some kind of sexual or psychological disorder, who cannot live in a normal way..."

A bisexual woman's boyfriend used her past lesbian experiences to justify repeatedly raping her. Twenty-eight-year-old Christy (who has a feminine gender expression) described how her boyfriend at the time forced her to have sex with him. She said:

It was like 24/7 sex for him, and I felt that, you know, he was raping me. He forced me to have sex with him...even if I said no to that, you know, he used to push me into it and ask me 'Why?' if I refuse, and say things like, 'You don't like me anymore,' 'You don't love me anymore,' 'But I need it,' something like that. He also used to tell me to imagine that I was with my girlfriend. And he used to tell me 'I'm going to do you so that, you know, she can watch' or something like that.³⁹

Sri Lankan law specifically excludes marital rape from criminal sanctions, contributing to a situation where rape in intimate relationships is considered less serious than stranger rape. This legal blindness on marital rape creates an even more permissive and potentially abusive relationship for sex between people who are not married.

In this instance, Christy's past erotic bonds with women were readily exploitable, objectified by the male gaze as lurid pornographic fantasies of two women together. This should not be forgotten, just as much as the physical violence, since what was manifest more than anything (according to her interview) was his sense of unquestionable male and heterosexual prerogative over her—that he could assert his desires and make her experiences and will subordinate to his needs.

H is 23 years old and identifies as "gay." Her gender identity is female and gender expression is masculine. H spoke to us about an incident of unwanted sexual touching when she was on her way home from a nightclub. She said:

I was going home in a trishaw after partying at *Amuseum*,⁴⁰ and this *tuk tuk* driver started talking to me. Since I look like a boy, usually nothing happens. But I think this time this guy kind of [may have] figured out that I was a girl [but wanted

37 A *tuk tuk* is a three-wheeled taxi.

38 Interview with Roshmi, Women's Support Group, Sri Lanka, January 6, 2012.

39 Interview with Christy, Women's Support Group, Sri Lanka, February 16, 2011.

40 A popular nightclub in Colombo.

to make sure coz I didn't look like a girl]. So he was being weird. I gave him five hundred rupees, and my house is very close to *Amuseum*, like walking distance.⁴¹ So it would have only cost like a hundred rupees or something. And then, instead of giving me my change, he was like, '*Malli katata gannawada, ethakota dennam*' ('Younger brother, give me a blow job, and I'll give you your change.'). And I said *pissuda!!* (Are you mad!!) and then he said '*Kollekda? Kellekda?*' ('[are you a] boy or a girl?') And I was like, *Panseeya aran yanna* (Take the 500 rupees and leave.). And then he just grabbed me from the hand and almost felt me up. I just ran away.⁴²

This incident highlights the vulnerability to violence of those who do not fit into the normative binary gender categories of male or female. Despite her subversive gender presentation, H's sense of safety also comes from being perceived to be one or the other—usually male.

This might not be so ironic in the light of this incident where it appears that the uncertainty of H's gender was made capital of—in fact made the occasion of an attempt to sexually exploit her. The precise motives of the *tuk tuk* driver are unclear (whether purely commercial or sexual or both), but his behaviour is clearly opportunistic. This illustrates how it is possible to exploit gender ambiguity (quite profitably) in a societal context where the norm is to conform to stereotypically demarcated categories of “male” and “female.” Those who are clearly neither one nor the other are always already aware of their vulnerability to such exploitation, and of the fact that there is little or no recourse for the violence except to physically escape.

A similar experience was recounted by Indrani, a 32-year-old lesbian resident of a Colombo suburb. Indrani views her gender identity as being ‘in the middle’ – neither feminine nor masculine. She spoke to us about an incident where she had been subjected to sexual harassment as a result of her gender non-conformity.

CHAMILA

Chamila is 36 years old, single, and lives in a suburb of Colombo, Sri Lanka, with her parents. She is ethnically Sinhalese, and a Buddhist, and has completed tertiary education. She works for the State Security Forces and earns less than approximately USD \$300 a month.

Chamila identifies as lesbian and butch. She realised that she was a lesbian at the age of 22 when she was attracted to women. She had a close friendship with one woman, which developed into a sexual experience after a year. She disclosed her sexual orientation to a few selected friends and to her boss at the age of 25. Chamila was “outed” publicly when a jilted lover made a scene outside her house, exposing Chamila's sexuality and their relationship to the neighbourhood. Her family was extremely disturbed by this incident,

and Chamila was given a beating by her father. Chamila's mother made her visit a psychologist on the pretext of getting her a headache remedy. In addition, Chamila faced intimate partner violence at the age of 30. She has also experienced discrimination and sexual harassment at her workplace, but never filed a complaint because she did not feel she would be protected by the law. She has been overlooked in selections for a sports team, and has twice been approached by seniors at her office to perform sexual favours with their wives and girlfriends. She has also been approached for sex by a senior colleague. She has been the object of her seniors' taunts at the workplace. Chamila counts on her lesbian friends, an LBT organization, and a colleague at work for support.

41 Approximately equal to USD \$5.

42 Interview with H, Women's Support Group, Sri Lanka, February 12, 2011.

Indrani: One day a man came and squeezed my breasts. We had gone to a carnival. A few boys were joking at us from a distance. We were there with lots of our friends [when this happened]. But when I looked back I didn't know who had done it. We were in the midst of a crowd.

Interviewer: Do you think it happened because you looked different?

Indrani: Yes! They can't bear us. We wear shoes and jeans and we smoke.⁴³

As in H's case, Indrani also faced sexual harassment because her gender expression was neither 'feminine' nor 'masculine'. She was groped sexually by strangers who not only wished to establish her gender identity but also wished to convey the message that she and her friends were being closely watched.

Intimate Partner Violence

Intimate partner violence (IPV) spanned emotional, physical and sexual violence. Because of the stigma associated with homosexuality and transgenderism in Sri Lanka, intimate partner violence in LBT relationships is enormously difficult to grapple with; when one's partner becomes abusive, it can seem impossible to seek help. When one is bisexual and with an opposite-sex partner, one's past homosexual experiences can be used against them. While 26 out of 33 interviewees had faced physical violence from an intimate partner, 11 out of the 26 had experienced emotional, physical and/or sexual violence at the hands of their partners.

For some, intimate partner violence happened on a single occasion, and the individual managed to break free. Sachini, 36, identifies as a lesbian and is a resident of a Colombo suburb. She spoke to us about how her break-up with her same-sex partner led to her being subject to physical violence and being confined to a room for a couple of hours. She said:

43 Interview with Indrani, Women's Support Group, Sri Lanka, April 28, 2011.

I was in a room, and [she] came in, and she locked the room so that I couldn't go out. Because I was not talking to her... she locked the room so that I couldn't go out. She threw me on the bed ... she wasn't rational. And I think she was also very drunk. So my reply was that we would talk in the morning ... but she wouldn't accept it. So then she wouldn't let me leave the room [and physically restrained me]. And I had to be ... rescued practically. The door had to be ... opened forcibly by others and she had to be forced [to let go of me].⁴⁴

For others, violence was chronic. For instance, Sandra spoke about the physical and emotional violence she faced in a three-year relationship. She said:

She was mainly very jealous, very jealous, and very possessive, like I couldn't look at someone ... Someone looked at me, [and] I'd get slapped If she was having a bad ... time at home or at work... and if I got like five minutes late to get home, she'd accuse me of ... screwing around. And she'd get violent she'd throw things at me ... she'd claw me ... she'd bite me ... she head-butted me and broke my nose ... but I was in that relationship for three and a half years.⁴⁵

For others, violence would erupt in conjunction with the abuser's chronic substance use. Kamala, a 59-year-old woman and a resident of a Colombo suburb, describes her sexual orientation as something that moved from heterosexuality to lesbianism. Kamala spoke to us about her second relationship, which she described as being "very abusive." She recalled, "In my stupidity I had believed that alcoholism is something that you can cure by

44 Interview with Sachini, Women's Support Group, Sri Lanka, April 4, 2011. The phrasing in square brackets were requested by Sachini because she felt more specific descriptions would enable identification of people involved in the incident.

45 Interview with Sandra, Women's Support Group, Sri Lanka, September 18, 2010.

loving people ... and so ... I was not able to stop the alcoholism ... even though I tried, and ... the person was a very violent alcoholic ... and tried to harm herself as well as me, as well as others in the vicinity, and that was really disastrous.”⁴⁶

Christy shared her experience of a relationship with a guy who knew that she was bisexual. She said:

Once I went out for this ‘Lady’s Night’ [themed party] and came home, and the first question that he asked was ‘With whom did you sleep?’ And I said, what do you mean? He was like ‘Obviously you were with your friends, and you know no guys can get into that club. So with whom did you sleep?’ I said nobody. Then he slapped me, and that was it for the relationship ... it was more like a big slap on my face and he, you know, tried to choke me.⁴⁷

Although Section 23 of the Prevention of Domestic Violence Act of 2005 allows for cohabiting partners to seek redress through the Act, none of the above interviewees reported any of these incidents to the police due to the fact that they were all in same-sex relationships. Consensual same-sex sexual activity can be read by police as criminal activity under Section 365A of the Penal Code, which covers a whole range of sexual behaviours, including between heterosexuals, but is used to criminalize male homosexuality and lesbianism.

Historically, 365A targeted gay men and men who have sex with men. The language of this law was amended in 1995, which criminalized lesbianism.⁴⁸

46 Interview with Kamala, Women’s Support Group, Sri Lanka, May 31, 2011.

47 Interview with Christy, Women’s Support Group, Sri Lanka, February 16, 2011.

48 In 1995, the Sri Lankan Penal Code was substantially amended for the first time in over a century, the focus of alteration being sexual offences (including rape, abortion, sexual harassment and unnatural offences, the latter being the law that criminalized homosexual acts). The reforms included developing gender neutral language for perpetrators of sexual offences, which led to the criminalization of lesbian sexual acts for the first time. The revised language now refers to ‘any persons’ instead of ‘any man’

The Domestic Violence Act has not been tested against 365A. The ambiguity between having legal recourse under the anti-domestic violence law while also being at risk for penalties under the anti-sodomy law further deters women experiencing violence in same-sex relationships from filing complaints or seeking protection orders.

DISCRIMINATION AT THE WORKPLACE

For the purpose of this research discrimination is considered as violence if the discriminatory acts result in violence. For example, as in the following instances:

- If the act of discrimination causes physical or psychological harm, or increases the severity or frequency of physical violence;
- If the discrimination compounds a situation that ends up causing or leading to violence;
- If the discrimination contributes to particular types of violence and/or invites certain types of violators;
- If discrimination becomes the justification for violence by state and private actors;
- If discrimination serves as a rationale for the state’s inaction when violence occurs;
- If discrimination results in institutional mistreatment of LBT victims of violence.

Four interviewees spoke about experiences of emotional, physical and sexual abuse at the workplace as a result of discrimination against them.

Christy, a bisexual women, spoke about how her CEO had sexually harassed her and summoned her to his cubicle after work hours despite her repeated refusals. This situation was exacerbated after one of her Directors “outed” (revealing a person’s sexual

committing an unnatural offence. For more details see Y. Tambiah, “(Im)moral Citizens: Sexuality and the Penal Code in Sri Lanka,” In A.J. Canagaratna (Ed.), *Neelan Tiruchelvam Commemoration Conference Papers* (Colombo: ICES, 2004), 107 – 141.

orientation or gender identity without permission or inadvertently) Christy to the CEO, who then invited her to perform sexual acts with other women for his viewing pleasure. Christy said:

He came up with this idea that he'll introduce me to another girl and wanted to know whether he could watch while I had sex with her. And it was very sickening because of that reason I wanted to leave my job. Because when he got to know that I love women more than men, then he always kept coming up with ideas such as these. Every time I see him ... I just want to run because I know that even he is just looking at me, he looks at me in a very odd way like. And then sometimes, you know, since he has my mobile number, he would text me saying, 'How is your girlfriend?' or 'Can you send pictures of her?' and 'How are your private parts?' ... I was so harassed and mentally down and I really didn't want to work. And you know, in my office, people just gossip and if you don't sleep with the manager, you don't get anything. You don't get salary increments, you don't get promotions, nothing. So I'm stuck in the same place as a customer care person; I work like a dog and I don't get salary increments because of the reason that I don't sleep around. And in my office, from the security guard to the management, they all want to know details about my personal life ... and the situation is so bad ... I can't tell them or introduce my girlfriend as my 'partner' because then they want to know if they can 'join' or if they can 'watch.' Those are the questions they would ask.

Christy's experience of sexual harassment at work is not uncommon for many women. However, it was clearly exacerbated by her being a bisexual woman who was at the time in a relationship with a woman. It was difficult for her to access any formal redress without being subject to further harassment and abuse by her employer.

Most sexual harassment policies in both public

and private employment settings do not include harassment on the grounds of sexual orientation although the 2013 Code of Conduct and Guidelines on Sexual Harassment at the Workplace defines sexual harassment as harassment that is based on "sex and/or sexuality" and could include verbal harassment that refers to a person's "sexual identity."

Indrani, a lesbian with masculine gender expression, reported that she had faced discrimination at her previous workplace in relation to employee housing. She said:

When we are working, boys and girls all work together. But when it comes to sleeping, bathing and reserving rooms, the management separates us from the other girls, saying that we are abnormal. They do not like to stay with us. Because they don't like us, we have been given separate places.⁴⁹

Skinner, an FTM, pointed out that, many times, his female-to-male status affects his chances of finding suitable employment. He said:

On all my documentation, my name is different [feminine] and my gender is different [masculine]. So when I appear in front of them [prospective employers], it's someone else they see. So some people find bad excuses saying, 'sorry we can't hire you' or 'we will let you know.' But some have been really rude saying things like, 'you can never get a job like [looking like] this!' or 'why are you dressing like a man?' or 'why can't you be normal?'⁵⁰

49 Interview with Indrani, Women's Support Group, Sri Lanka, April 28, 2011.

50 Interview with Skinner, Women's Support Group, Sri Lanka, October 7, 2011.

CHRISTY

28-year-old Christy was born in Kandy, but currently lives in Colombo with her girlfriend. Ethnically Sinhalese, she was born into a Roman Catholic family but says that she “hardly goes to church” and practises her religion in her “own way.” Christy currently works in Colombo as a customer care executive at a private company. Her perception of her gender identity is that it is 75% feminine and 25% tomboyish. She does not use a specific term to describe her sexual orientation, but says she is “100% happy with a woman rather than being with a man.”

Four years ago, when Christy was 24 years old, she told her brother that she preferred women over men as sexual partners. Although at first he did not take it seriously and did not want to talk about it, eventually he was in support of her preferences and asked her to make her own choices when her parents were trying to force her into marriage. When Christy came out to her aunt at age 21, she met with an unexpected reaction. Instead of being supportive of Christy’s choices, her aunt made sexual advances towards her. A couple of years after this

incident, when Christy’s uncle found out that Christy had a girlfriend instead of a boyfriend, he tried to forcibly show her porn and stalked her on Facebook by making rude comments on her page.

Apart from these experiences of physical, sexual and emotional abuse, Christy also faced physical and sexual abuse from her ex-boyfriend who shoved, pushed, and throttled her, and constantly forced sex on her after he found out about her past experiences with women. At her workplace, the then CEO would constantly harass her with crude SMS messages asking her how her “private parts” were and whether he could “join” or “watch” when she was having sex with her girlfriend. As a result of this physical, sexual and emotional abuse, Christy began to exhibit self-harming behaviour, which included cutting herself and burning herself with cigarette butts. She even notes that, to date, even though she thinks about committing suicide when “it’s really hard,” she is unable to trust anyone to talk about it after her abusive experiences with her aunt and uncle.

Chamila, a lesbian state sector employee spoke of discrimination and sexual harassment at the hands of her supervisors on two separate occasions. In the first instance, one of her supervisors (approximately 59 years old) asked her to have sex with his wife, who he claimed was also a lesbian.

“He called me to be with his wife. I told him that I was not a person who would go behind any old woman and that I was not ready to fulfil each one’s wish and that I didn’t like it.”⁵¹ He had also offered to grant her a job transfer. At the time of these incidents, Chamila wanted to be transferred to the head office in the capital, Colombo. Her supervisor used this to rationalize the demands for sexual favours. When Chamila refused to comply, her employer rejected the job transfer request and passed her over for a promotion.

Chamila also spoke of how another male supervisor at the same workplace became verbally abusive after a colleague “outed” her [to him]. “Apparently ... someone had told some tale about me. So he called me and scolded me in front of about four or five others. He used some swear words and the word ‘*Aappa*.’”

Government authorities have not adopted any formal policies on sexual harassment in the workplace. There is no formal policy in the corporate sector either although some private companies regard such a policy as a progressive mechanism, which they voluntarily develop and adopt. Even in this instance, the sexual harassment policies do not have explicit provisions that prevent harassment on the basis of sexual orientation, gender identity or gender expression.⁵²

51 Interview with Chamila, Women’s Support Group, Sri Lanka, August 8, 2011.

52 See earlier reference to 2013 Code of Conduct and Guidelines on Sexual Harassment at the Workplace.

VIOLENCE AND DISCRIMINATION BY STATE ACTORS

The interviews revealed that 13 out of 33 interviewees had experienced violence from state officials, mainly the security forces and the police. Violence committed by state officials renders lesbians, bisexual women and transgender people vulnerable in particular ways. For instance, in such cases, reporting the violence is not a straightforward option because of fear of reprisals including the potential for being charged with homosexuality or otherwise criminalized for one's gender identity or gender expression.

Indrani, a masculine-looking lesbian described an encounter with the police on one occasion when she and her female friend (who had a feminine gender expression) were dining at a restaurant on the beachfront. The beachfront areas are well known for police raids on heterosexual couples who meet in this area.⁵³ Indrani said:

After having our dinner, my friend and I chatted till about 8pm and left the restaurant. When we came out, there were a few policemen outside and they were checking all the people on the beach. They were especially checking [straight] couples, who were near the bushes. We were walking towards the road from the beach. As we were coming out from the restaurant, two policemen stopped us and asked us where we were going. We told them we had had dinner at the restaurant and were now going home. We even showed them the bill [from the restaurant]. They said that we were loitering on the beach and took us to the police station for further questioning.⁵⁴

53 Since most Sri Lanka youth live with their families and since pre-marital sex is frowned upon, [heterosexual] young people who cannot afford to meet in private spaces meet on the beach. "Near the bushes" in the quote is a reference to [heterosexual] couples who take refuge in the shrubbery in this area.

54 Interview with Indrani, Women's Support Group, Sri Lanka,

As per the Vagrants Ordinance of 1842,⁵⁵ anyone deemed to be "loitering in public" can be questioned by police. This law is used to target masculine-looking lesbians and transgender persons of lower socio-economic status, rendering them most vulnerable to police abuses. Police raids on the beachfront area generally result in detention (where physical and sexual violence take place). Release from detention is often conditional on paying a bribe.⁵⁶

Transgender persons and lesbians with a masculine appearance have also reported harassment at security checkpoints from security forces personnel who have been known to ask insulting questions if the picture and name on identity cards do not match the security officers' perceptions of masculinity and femininity.

Sandra spoke about how she would often be mistaken for a man at military checkpoints in Colombo. She said:

I've had a lot of guys check my ID and ask me why I have a girl's name and then I turn around and say, 'Yes Officer, that's because I'm a girl.' Some guys have said, 'Are you a Miss or a Sir?' and I turn it around and say, the ID card will tell you whether I'm female or male, so why don't you check that first. So that really pisses me off and I try to set them straight right from the beginning.⁵⁷

Some interviewees also spoke of failed attempts to obtain state services such as pension schemes and bank loans on the basis of a shared income with their same-sex partner. They considered this denial to be an instance of institutionalised state discrimination.

April 28, 2011.

55 "Vagrants Ordinance," Sri Lanka Penal Code, http://www1.umn.edu/humanrts/research/srilanka/statutes/Vagrants_Ordinance.pdf

56 For more details on police raids against nachchi (transgender) sex workers in Sri Lanka see Andrea Nichols, "Dance Ponnay, Dance! Police Abuses Against Transgender Sex Workers in Sri Lanka," *Feminist Criminology*, April 2010 vol. 5 no. 2 195, <http://fcx.sagepub.com/content/5/2/195>

57 Interview with Sandra, Women's Support Group, Sri Lanka, September 18, 2010.

Seven interviewees reported facing violence from state sector service providers including mental health and medical professionals. Some of the violence took the form of being forcibly taken to religious institutions, hospitals, medical services, and mental health services to “be cured,” often accompanied by a parent.⁵⁸ One interviewee even stated that her partner’s family had used electro-shock therapy on her partner in order to “cure” her.⁵⁹

ACCESS TO REDRESS

I knew I couldn’t go to the police. What was I going to say? – ‘You know they beat me up ‘coz I danced with some girls?’ It was just going to get me into even more trouble, and I was alone...So I just got into a tuk and went home.⁶⁰

– Sandra, 34 years old, butch lesbian

This research thus suggests that incidents of physical violence, both in the public and private spheres, remain under-reported and undocumented, and that LBT people who experience physical violence rarely seek compensation, redress or even counselling from mental health service providers who work with women who have experienced violence – such as domestic violence programs or support groups.

A key issue faced by all interviewees is that they have no access to redress. As mentioned above, when describing their experiences of violence at the hands of family members, many interviewees had difficulty associating a family member with the term “perpetrator” and were reluctant to report the violence to the police or any other organization, especially when the violence took place in the private space of the

family home. Some interviewees said that they were reluctant to report violence in the home to police because this would entail placing a family member in the hands of the law. Similarly, interviewees did not want the risk of unwelcome publicity or the likelihood of exposing the family to shame and ridicule.

When they were the victims of violence in a public space, such as on the street, at community gatherings, in public transport, or at the workplace – and targeted for their gender non-conformity or sexual orientation – there was reluctance to report the violence for fear of being personally exposed as LBT.⁶¹ Even when the crime is not related to their sexuality or gender identity, LBT individuals feel vulnerable because of a Penal Code provision that can be read to criminalize adult consensual same-sex sexual activity. In fact, some of the LBT people we spoke to specifically cited both Section 365A of the Penal Code and the Vagrants Ordinance as reasons used to target them for arrest and harassment.⁶²

Police in Sri Lanka are generally perceived by the LBT community as dangerous. A reason for this perception is that police officers use blackmail and violence against people who they perceive to be homosexual, bisexual or transgender.⁶³ In this context, interviews revealed that LBT persons doubted the possibility of getting redress for violence by police.

Additionally, the court system in Sri Lanka is generally not victim-friendly.⁶⁴ Court hearings

58 See interview by Chamila and Skinner for more details of how interviewees were forcibly taken to religious and medical institutions to be cured.

59 Interview with Roshmi, Women’s Support Group, Sri Lanka, January 6, 2012.

60 Interview with Sandra, Women’s Support Group, Sri Lanka, September 18, 2010.

61 Interviewees feared being exposed for multiple reasons: some feared that their families would find out that their sexual orientation, while others feared that they would be opening themselves up for police harassment and /or arrest under Section 365A of the Penal Code.

62 Section 365A of the Penal Code (Amendment), [http://www.aidscontrol.gov.lk/web/Web%20uploads/Policy%20or%20Law/Penal%20Code%20\(Amendment\)%20Act,%20No.%202022%20of%201995.pdf](http://www.aidscontrol.gov.lk/web/Web%20uploads/Policy%20or%20Law/Penal%20Code%20(Amendment)%20Act,%20No.%202022%20of%201995.pdf). And see earlier reference to Vagrants Ordinance.

63 Andrea Nichols, “Dance Ponnay, Dance! Police Abuses Against Transgender Sex Workers in Sri Lanka,” *Feminist Criminology*, April 2010 vol. 5 no. 2 195, <http://fcx.sagepub.com/content/5/2/195>

64 In the Kamal Addararachchi Rape Case, the judgment of the High Court for the victim was subsequently overturned in the Sri Lanka Supreme Court and the judge of the High Court was accused of mollicoddling the witness for taking measures to hold closed

are open to the public, which deters most people from reporting violence they experience to the police so as to avoid going to court. They fear that their sexual orientation and gender identity could be exposed in open court when the reasons for the violence are revealed.

Furthermore, as mentioned earlier in this chapter, the Human Rights Commission, the Police Commission, the Public Services Commission, and the Judicial Services Commission are not trusted to function independently since these commissions are made up of presidential appointees.⁶⁵

IMPACT OF VIOLENCE, RESPONDING AND COPING

This research also examined how lesbians, bisexual women and transgender people responded to violence. While some LBT interviewees felt that the best way to deal with a difficult situation was to leave/ignore the discriminatory situation or site of violence, others reacted by confronting the situation at hand. For the purpose of this research, we have categorized three distinct responses that were used by LBT respondents:

1. Affective response;
2. Passive response;
3. Active/activist response.

door sessions. See "The pendulum swings again," *Sunday Times*, January 7, 2001, <http://www.sundaytimes.lk/010107/news4.html>.

65 Chapter VII(a) of the 18th Amendment to the Constitution of Sri Lanka grants the President the authority to appoint the chairman and members of the following state institutions: The Election Commission, The Public Service Commission, The National Police Commission, The Human Rights Commission of Sri Lanka, The Commission to Investigate Bribery and Corruption, The Finance Commission, The Delimitation Commission. The 18th Amendment is available online at: [http://www.priu.gov.lk/Cons/1978Constitution/18th%20Amendment%20Act\(E\).pdf](http://www.priu.gov.lk/Cons/1978Constitution/18th%20Amendment%20Act(E).pdf)

Affective Responses

All interviewees suffered drastic and lasting emotional effects because of the violence and discrimination they had experienced. All but two interviewees said that the violence had negatively impacted their mental health. They reported experiencing depression, anxiety, and emotions of anger, frustration and fear. They often felt "extremely low" [Maya], "mentally very down" [Roshmi], and "wanting to cry, wanting to hammer the walls, frustrated" [Chandani]. Christy said she often had "depressing attacks," and would take "whatever pills" the doctor prescribed for her "and just be high sometimes" so as not to "feel the reality." Maya also said she "broke out in psychosomatic symptoms" chiefly eczema, as a "nervous reaction" after she was forcibly "outed" to her parents.⁶⁶

Twenty of those interviewed chose to hide their sexual orientation for fear of rejection from society, friends and family. A further 18 felt resigned to their fate, minimized the severity of the violence, normalized the violence, or internalized the violence. Almost two-thirds of the interviewees blamed themselves for the violence they had experienced. They felt self-hatred because of their gender identity and sexual orientation and engaged in self-harming behaviour like cutting or skin-burning. Jenny stated, "Normally I do not like to hit or scold anyone. So in order to control my sadness I do it, I cut myself and suffer in order to get relief from my sad feelings."⁶⁷ Jenny is 28 years old and grew up in the North Central Province but currently lives in a suburb of Colombo. She identifies as a "butch lesbian."

Eleven interviewees said that they had thoughts of committing suicide or had attempted suicide at some stage in their lives as a coping mechanism.⁶⁸

66 Interview with Maya, Women's Support Group, Sri Lanka, January 22, 2011; Interview with Roshmi, Women's Support Group, Sri Lanka, January 6, 2012; Interview with Chandani, Women's Support Group, Sri Lanka, November 17, 2010.

67 Interview with Jenny, Women's Support Group, Sri Lanka, 2011.

68 According to a 2011 WHO study, suicide rates in Sri Lanka are the second highest in the world, in relation to both female and

Chamila stated, "I attempted it once because I couldn't take the pain anymore. I was very disappointed with life and it took me a very long time to get over it."⁶⁹ Another respondent, Skinner, fantasized about perishing in a bus bomb blast.⁷⁰

A smaller number (5) of the sample population reported that substance abuse (alcohol, cigarettes and drugs) and clubbing were coping mechanisms. Roshmi said that when she was "severely mentally down" in the past, she had smoked 15-20 packets of cigarettes: "I used to chain smoke without breathing. Then I got sick."⁷¹

Discrimination in employment was also an aspect that affected mental health. Skinner said he often felt very depressed because employment opportunities were denied him on the basis of his gender identity. He said, "I just want to, you know, earn a living ... I mean like I'm not asking for charity! It's like I have this skill ... and like, let me work and get paid for it - that's all."⁷²

Disclosing their sexual orientation or gender identity to friends ("coming out") often made interviewees feel rejected. DKS said she felt rejected when "all of a sudden ... they kinda treated me as if I was ... someone different ... when I wasn't ... I was the same person ... but somehow ... I don't know, they just refused to be associated with me."⁷³

male suicide rates. See "Suicide rates per 100,000 by country, year and sex," World Health Organization (2011), accessed October 11, 2012, http://www.who.int/mental_health/prevention/suicide_rates/en/ Suicide is no longer a crime in Sri Lanka, although there was rigorous punishment for it up to 1998. See "Suicide Prevention: Emerging from Darkness," World Health Organization (2004), accessed October 11, 2012, http://www.searo.who.int/en/Section1174/Section1199/Section1567/Section1824_8089.htm.

69 Interview with Chamila, Women's Support Group, Sri Lanka, August 8, 2011.

70 A reference to a period in the conflict between the Government of Sri Lanka (GOSL) and the Liberation Tigers of Tamil Eelam (LTTE), when the LTTE targeted civilians by bombing buses. Interview with Skinner, Women's Support Group, October 7, 2011.

71 Interview with Roshmi, Women's Support Group, Sri Lanka, January 6, 2012.

72 Interview with Skinner, Women's Support Group, Sri Lanka, October 7, 2011.

73 Interview with DKS, Women's Support Group, Sri Lanka, September 18, 2010.

Anu, a bisexual woman, said she felt very sad when a friend was bi-phobic. She said, "I was very angry and very frustrated, just not being able to understand why this was done to people who were really just trying to live their lives and love who they loved."⁷⁴

Thirty-one interviewees said that they often felt depressed and guilty while they struggled to come to terms with and accept their non-conforming sexuality or gender identity. However, despite enduring negative social and psychological effects, the vast majority of interviewees spoke of positive feelings arising from the support of friends, partners, family members, LGBT organizations, religious leaders and workplace colleagues.

Dharshi, a 46-year-old woman who lives in Colombo, detests labels, and prefers to say she "sleeps with women." She said that she could not deal with her sexual orientation for a very long time, "but then I met people who were cool about it and slowly it became the cooler thing to me and I was happy and comfortable."⁷⁵

Indrani, too, spoke to us about a similar experience. She said:

Even though I don't have people who understand me at home, I met friends who understood me. They had parties. Everyone spoke to me. No one laughed at me. No one asked me why I don't wear earrings. I was very comfortable there. I don't care what society thinks about me. There are a lot of people who accept me. So I felt good.⁷⁶

It must be noted that although a number of interviewees reported getting support from different sources and feeling supported in many ways, only a third of the population expressed feelings of pride and strength in themselves.

74 Interview with Anu, Women's Support Group, Sri Lanka, May 13, 2011.

75 Interview with Dharshi, Women's Support Group, Sri Lanka, October 30, 2010.

76 Interview with Indrani, Women's Support Group, Sri Lanka, April 28, 2011.

Passive Responses

Most of the people we spoke to did not verbally or physically fight back in response to violence, discrimination or abuse. Twenty-five interviewees avoided any form of confrontation, saying that they had felt paralyzed and decided not to take action during, and in the aftermath of, the violence. Indrani said:

Once at the place I work, I had an argument with two boys. After that, while I was having my lunch they shouted in front of everybody and said, 'Ah ... today the *Aappa* pan has been burned.' I stayed silent as if it was not said to me.⁷⁷

Some interviewees practiced self-restraint, especially with family and relatives. For instance, Skinner said, "It's better off that way [laughs] ... I try not to think of those things most of the time and bottle it up as much as possible ... what else ... to do ..."⁷⁸

Our interviews also revealed that lesbians in particular avoided public spaces to steer clear of potential homophobic violence and/or abuse directed at them because of their sexual orientation, gender identity or gender expression. Scholars have noted that "Many places inhabited by lesbians and gay men are "contested sites," where the forces of homophobia challenge the survival and formation of communities of sexual minorities."⁷⁹

Anishka is 25 years old, lives in Colombo, and identifies as "bi or lesbian but 80% lesbian." Her gender identity is feminine. She spoke to us about how she and her partner would deliberately avoid public spaces: "We are very conscious of where we go ... we know our spots ... the small little juice

bars, or we eat at home, we hang out at friends' places. We don't do public places."⁸⁰

Socio-economic background played a vital role in determining how lesbians, bisexual women and transgender people shielded themselves from violence. The research found that if LBT people had the finances they could afford to "buy safety" by not exposing themselves to environments that were unsafe. As Maya says, she will "pick and choose places" she goes to. She said:

There are certain activities I've curtailed as a result, certain parts of town I won't go to. I don't walk on the streets, I go everywhere by car, I don't take public transport, not even trains, that kind of thing.⁸¹

Interviewees also had to safeguard their privacy at their workplace as a way to minimize any potential homophobic comments. Soma is 40 years old and was born in Colombo but presently lives overseas with her partner. She says her gender identity is feminine and her sexual orientation is lesbian. At the age 24, while she was living in Sri Lanka and looking for a job, she felt she was discriminated on the basis of her perceived sexual orientation, which led to her changing her entire career. She said:

I think it affected my decision to not get into a social support type of job or career that required close proximity and building close relationships with people. I think ... that maybe I felt safer working in areas where my sexuality would not be used as an issue by people to say, well, you know if you are a lesbian you may take advantage of clients, well female clients that sort of thing.⁸²

77 Interview with Indrani, Women's Support Group, Sri Lanka, April 28, 2011.

78 Interview with Skinner, Women's Support Group, Sri Lanka, October 7, 2011.

79 Gordon Brent Ingram, Anne-Marie Bouthillette, Yolanda Retter, Eds, *Queers in Space: Communities / Public Places / Sites of Resistance*, (Bay Press: USA, 1997).

80 Interview with Anishka, Women's Support Group, Sri Lanka, October 7, 2010.

81 Interview with Maya, Women's Support Group, Sri Lanka, January 22, 2011.

82 Interview with Soma, Women's Support Group, Sri Lanka, 2011.

Active/Activist Responses

Responses in this category included leaving one's family, city, region or country; passing as "straight" or adhering to normative gender roles; seeking support through LGBT community or groups; seeking solace outside the home (e.g., playing sports, going to the gym/library and spending time away from home); and physically and verbally fighting back.⁸³

Six interviewees said they had left, or expressed a desire to leave, their family, city, or country, in response to facing discrimination and violence. As Christy pointed out, "It's really hard to live my life. There are times that I ... just want to leave without a trace... just leave the country sometimes or maybe just die."⁸⁴

Not all those who expressed a desire to leave were able to do so for varying reasons, the most pressing being lack of financial resources. Others stated that they had left their parental home or their place of residence as a result of familial violence or, in some cases, due to violence and mistreatment from landlords who viewed lesbianism as immoral.

Passing in different forms is an interesting and useful strategy adopted by seven of the lesbian and transgender interviewees in order to avoid violence, abuse, and mistreatment in their daily lives. Just as "masculine" clothing or style of dressing made lesbian identity visible, it also afforded safety in male-dominated public spaces. For instance, one lesbian interviewee claimed that, for reasons of safety, she preferred to pass as a boy when riding her motorcycle at night.⁸⁵

While some interviewees chose to "pass" by adhering to normative gender roles (masculine, if born male/feminine, if born female), others passed either in their self-identified (trans)gender role or in their socially

"misrecognized" gender role (masculine, although born female, and feminine, although born male).⁸⁶ For instance, H stated that she often passed as a boy due to being "misrecognized," and that it was, therefore, more convenient for her to continue as such. She said:

Public toilets – every time you walk into the bathroom, it's like '*Malli Malli weradila anith eka*' ('*Younger brother, you've got it wrong, it's the other one*'), and I'm like oh God! And then I'm like, oh Shit! I went into the wrong one, and I go to the guys' one ... coz everyone thinks I'm a boy.⁸⁷

For Maya, on the other hand, passing as a feminine woman was a strategy she tried out for a short period of time in order to avoid having to deal with being stared at in public on a daily basis. Maya is a 37-year-old, lesbian-identified androgynous woman who lives in Sri Lanka. She said:

I changed my gender appearance, I grew my hair out, I put on a bit of weight as well. I looked much more feminine and at that point, you wouldn't believe it, I faded, no one paid any attention to me at all. I could go into banks you know, any institution, whereas previously I would get so many stares, [but this time] absolutely nothing. So it was refreshing but at the same time I felt really at odds with the person that I was at the time. I felt that how I looked didn't

⁸³ The use of "passing" here means convincingly appearing in public as conforming to norms related to gender and/or sexual orientation.

⁸⁴ Interview with Christy, Women's Support Group, Sri Lanka, February 16, 2011.

⁸⁵ Interview with Indrani, Women's Support Group, Sri Lanka, April 28, 2011.

⁸⁶ Ruth Rubinstein (1995) notes that signs and symbols are useful to analyse the language of clothing. She defines 'signs' as that which conveys a single, clear-cut meaning, in contrast to "symbols" which have multiple meanings (p.7). Fashion and clothing images can, therefore, be an effective means of communication only if the signs and symbols are recognized and interpreted by a knowing audience. Failure to do so would result in misrepresentation or misinterpretation. For example in Sri Lanka, a "butch lesbian" would only be identified as a "butch lesbian" within a social space that recognized the style of clothing associated with "being butch." In contrast, in a rural village in Sri Lanka, a "butch lesbian" would simply be (mis)recognized either as a "boy" or a "girl pretending to be a boy."

⁸⁷ Interview with H, Women's Support Group, Sri Lanka, February 12, 2011.

really reflect my subjectivity.⁸⁸

Twenty interviewees reported that they had actively sought solace or guidance from support groups, individuals or institutions, either within the queer or feminist community or movement. As Maya has rightly pointed out:

It's amazing, you know, these support groups (referring to the Women's Support Group), you can have ten million activities, but really just having the space and hanging out there and having lunch, that's support enough.⁸⁹

Chandani explained that for many years she actively sought support from her "chosen family" (friends she relied on) as opposed to being dependent on her biological family.⁹⁰



Eleven of the interviewees said that their solace from violence, abuse, and mistreatment came from activities that gave some mental stimulus and could be conducted outside the home, such as listening to music, watching movies, and going to the library. Others turned to more physically demanding activities, such as workouts in the gymnasium and jogging.

For most lesbians and transgender people interviewed (22 out of 33), verbal resistance was the most common form of fighting back and dealing

with discrimination and violence. These individuals said that the only way to deal with emotional harassment from parents was to fight back by arguing whenever possible.

Thirty-six-year-old Hothead is a lesbian-identified soft butch woman, living in Colombo. She said:

My mother wanted me to get married ... and then she kept proposing these friends' sons as being the ideal husbands. And I [said] ... you know I think you better give up because I don't really fancy men ... I prefer women.⁹¹

A similar response emerged from Inoka, a 29-year-old who identifies as a butch lesbian and is a Colombo resident. Describing how she had responded to her mother's questions after she came out as a lesbian, she said:

Her first question went straight to the ... sex act ... She was like 'How do you have sex with another woman?' ... or 'Have you had sex with another woman for you to know that you're gay?' ... I said ... Well, did you have sex with a man to know that you're not?⁹²

Christy, who spoke about being sexually harassed at her workplace, said that the harassment stopped at verbal abuse and did not escalate to physical abuse because she confronted the perpetrator. She said:

I warned my CEO that if he tried to do something that I'd definitely [go] to the Labour Department. I told him that if he tried to touch me I would slap him, and that I would slap him in front of people.⁹³

Naomi, 20, lives in Colombo with her parents, and

88 Interview with Maya, Women's Support Group, Sri Lanka, January 22, 2011.

89 Interview with Maya, Women's Support Group, Sri Lanka, January 22, 2011.

90 Interview with Chandani, Women's Support Group, Sri Lanka, November 17, 2010.

91 Interview with Hothead, Women's Support Group, Sri Lanka, September 18, 2010.

92 Interview with Inoka, Women's Support Group, Sri Lanka, October 14, 2010.

93 Interview with Christy, Women's Support Group, Sri Lanka, February 16, 2011.

does not like to use labels to describe her sense of self. She said that she used the English language as a tool to intimidate strangers who hurled verbal abuse at her: “I spoke to him in English because I know that always intimidates people and ... after a while, he shut up and went away.”⁹⁴

LAWS AFFECTING LBT PEOPLE IN SRI LANKA

Section 365A - Penal Code – Gross Indecency

Section 365A of the Sri Lankan Penal Code Amendment Act No. 22 of 1995 is used to criminalize adult consensual same-sex sexual relations.⁹⁵ Prior to the 1995 amendment of the Sri Lankan Penal Code, Section 365A was read as criminalizing sex between men only. In an ill-conceived bid to make the provision gender neutral and non-discriminatory, 365A was amended to read as “an act committed between persons,” and this amendment brought sex between women under its purview.⁹⁶

“Gross indecency” is not defined, and it is unclear whether the absence of a definition means that

the provision could be read as also applying to heterosexual sexual relations. In a social context where political and other public leaders routinely direct hostile remarks at LGBT communities, it is likely that “gross indecency” is associated with same-sex relations in the public imagination.

Though Section 365A has seldom been tested in a court of law, the mere fact that such a vague value-based provision is on the books makes sexual minorities vulnerable to police abuse and extortion from others, not only in their life choices or sexual practices, but also in their activism around sexual rights.⁹⁷ There have also been “instances where private citizens threatened to use it against others, usually family members, and roped in the agents of the law.”⁹⁸

The criminalization of homosexual sexual activity paves the way for police and anti-gay groups to brand all lesbian, bisexual women, and transgender people as “perverts” and criminals. The fear of being apprehended and identified as non-heterosexual leads to a cycle of silence involving LBT people, their families, friends and the society as a whole. This leaves LBT people vulnerable to a range of human rights violations, including extortion, intimidation, unlawful arrest and detention, physical and sexual harassment and bullying, torture, rape, even murder on the basis of sexual orientation, gender identity or gender expression by state and non state actors, including private individuals.

94 Interview with Naomi, Women’s Support Group, Sri Lanka, September 22, 2011.

95 It reads: “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 fine or with both and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person.”

96 Y. Tambiah, “(Im)moral Citizens: Sexuality and the Penal Code in Sri Lanka,” In A.J. Canagaratna (Ed.), Neelan Tiruchelvam Commemoration Conference Papers (Colombo: ICES, 2004), 107 – 141.

97 “Two men fined for gross indecency”, *Daily Mirror*, November 16, 2012, <http://www.dailymirror.lk/news/23546-two-men-fined-for-gross-indecency-.html> “A Colombo Court today imposed a fine of Rs.1,500 each on two men who pleaded guilty to the charge of engaging in homosexual acts inside a public lavatory at the Fort Railway Station. The Fort Police arrested the two men, one aged 40 and the other 50, while they were engaging in oral sex. One of them was identified as a state institution employee. In the charge sheet filed before Colombo Fort Magistrate Kanishka Wijeratne, the prosecutors said the suspects had committed a punishable offence which came under section 365 (A) of the Penal Code. Police charged that the suspects had engaged in activities of gross indecency at a public lavatory. Defence Counsel Jayantha Pathirana told Court that his clients would plead guilty to the charges.”

98 Y. Tambiah, “Man-made Laws and Feminine Feelings: A ‘Lesbian’ Encounter with the Law in Sri Lanka,” *Lines 2* (1), (May 2003)

Section 399 – Penal Code - Cheating by Personation

Section 399 of the Sri Lankan Penal Code, “Cheating by Personation” is often used against transgender people.⁹⁹ There have been several cases of “impersonation” and “misrepresentation” brought to court, where women were discovered to be “disguised” as men and their “true sexual identity” exposed to the public. Similarly, transwomen have also been arrested for “misleading the public.”¹⁰⁰

Vagrancy Ordinance of 1842

Sri Lanka’s Vagrancy Ordinance of 1842 continues to give authorities the power to detain people whom they consider to be loitering in public.¹⁰¹ The police

99 It reads: “A person is said to ‘cheat by personation’ if he cheats by pretending to be some other person or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is. Explanation - the offence is committed whether the individual personated is a real or imaginary person. Whoever is convicted of this offence will have to face a punishment of imprisonment of either description for a term which may extend to three years, or with fine or with both.”

100 “Boy Disguised as Girl since the age of 18,” *Lankadeepa*, August 31, 2010; “Woman disguised as a Male Army Officer married to a Woman following mobile phone love affair,” *Lankadeepa*, August 23 2010; “Women Disguised as Men (aka Tom Boys),” *Divaina*, May 17, 2009; “Person who had disguised himself as a man for 20 years becomes a woman at the police station,” *Lankadeepa*, January 3, 2009; “16 year old nomadic/ gypsy girl, disguised as a man, arrested as a suspect for a murder case,” *Lankadeepa*, May 11, 2005; “Boy becomes Girl at Dambulla Temple,” *Lankadeepa*, March 10, 2004; “Female Corporal arrested on charges of giving fake ID to male army officer disguised as a female army officer,” *Sunday Lankadeepa*, January 18, 2003; “Case of Man Disguised as Woman,” *Sunday Lankadeepa*, July 20, 2003.

101 It reads: Section 3 (1)(b) specifies that “every common prostitute wandering in the public street or highway or in any place of public resort and behaving in a riotous manner or indecent manner ... shall be deemed an idle and disorderly person and shall be liable upon first conviction to be imprisoned with or without hard labour for any term not exceeding 14 days or to a fine.” Sec 3(2) specifies that “such a person can be arrested without a warrant.”

have the discretion to interpret *mala fide* of the “idle person” to that of a vagrant and thereby enforce the law. This often leads to a wrongful application and misuse of the Vagrancy Ordinance, which results in wrongful detention of non-heteronormative women, transgender men and people from the nachchi¹⁰² community because they look different. The Vagrancy Ordinance is especially used to target transgender people of lower socio-economic status who are the most vulnerable to police abuses.¹⁰³ Their manner of dress (different from their biological sex) is often the basis for the assumption that they are sex workers – the Vagrancy Ordinance justifies the harassment, arrest and prosecution of sex workers.¹⁰⁴

The law requires the police to present the alleged offender (taken into custody without a warrant) before a magistrate within 24 hours. In January 2013, the Code of Criminal Procedure was amended to extend this period to 48 hours. However, if the offender is apprehended on a Friday, he or she could remain in detention for over 48 hours, because magistrates do not work over the weekend. Reports of victimization and abuse have emerged in some cases when arrests were made at night and the alleged offenders were detained in police stations overnight.¹⁰⁵

Fundamental Rights

The rights of the Sri Lankan citizen are spelled out in Chapter 3 of the Sri Lanka Constitution.¹⁰⁶ The Constitution does not explicitly guarantee protection on the grounds of sexual orientation, gender identity

102 The Sinhala term nachchi, is a category that is used by the nachchi community who view themselves as male bodied persons who “embraced female subjectivity but with no interest in abandoning key facets of their “maleness,” and are also unwavering in their ardent sexual desire for men” (Miller & Nichols, 2012: 555).

103 A Nichols, “Dance Ponnaya Dance,” *Feminist Criminology* April 2010, *Volume 5*, No.2, <http://fcx.sagepub.com/content/5/2/195>.

104 A Nichols, “Dance Ponnaya Dance,” *Feminist Criminology* April 2010, *Volume 5*, No.2, <http://fcx.sagepub.com/content/5/2/195>.

105 Ibid.

106 Article 12 of the same chapter spells out that no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.

or gender expression. It can be argued that these guarantees would fall under provisions that address non-discrimination and equality before the law to all persons. The constitution also does not give any indication that the term “sex” refers to anything other than the system of biological classification used to distinguish sex at birth as male or female. However, the provision covering discrimination prohibits distinctions made on “any such grounds” which, to be compatible with international human rights law, must be interpreted to include a prohibition of discrimination on the grounds of sexual orientation, gender identity and gender expression. However this is not so in practice, given the existence of a law that can be read to criminalize same-sex sexual activity.

The Constitution’s lack of specific anti-discrimination language related to sexual orientation, gender identity and gender expression has an immense impact on sexual minorities, chiefly because it places sexual minorities at a severe disadvantage in accessing rights, protections and legal guarantees. Section 17 of the Sri Lanka Constitution spells out remedies that are available to a person whose constitutionally guaranteed rights are infringed or threatened with imminent infringement by executive or administrative action. The remedies granted have included seeking redress through the courts, receiving compensation or restitution, reinstitution and promotions in employment. Many cases have been filed with the courts, including the Supreme Court, using the Fundamental Rights Application, which is a grievance mechanism for Sri Lankans wanting justice from the country’s highest court. However, these remedies offered by the law were infrequently accessed by individuals who experienced discrimination on the basis of sexual orientation, gender identity or gender expression.

Sri Lanka’s National Human Rights Commission investigates complaints of human rights violations and thus is an important mechanism for pursuing remedial action. However a scan of the Human Rights Commission’s Act will reveal that the enabling law restricts its scope of investigations and inquiries to “fundamental rights” alone—in short, to those human rights that are entrenched in the Constitution and therefore justiciable.

This leaves out discrimination on the basis of sexual orientation, gender identity and gender expression, which contravenes Sri Lanka’s commitment to respect, protect and fulfil all human rights under international law.¹⁰⁷ The Human Rights Commission Act also empowers the National Human Rights Commission to make recommendations to the government on measures to be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards.¹⁰⁸ However, there have been no known initiatives taken by the Human Rights Commission towards striking down the discriminatory laws that affect lesbians, bisexual women, transgender people and other sexual minorities.

International Treaties

Sri Lanka has ratified the major United Nations human rights treaties and most optional protocols.¹⁰⁹ Sri Lanka has yet to amend any of its national laws and policies and bring them in line with international human rights law with regard to protecting the rights of lesbians, bisexual women, transgender people and other sexual minorities.

107 *Sri Lanka Atrophy and Subversion of the Human Rights Commission, Law and Society Trust* (2010), ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, Colombo, Sri Lanka.

108 Section 10 (d) Human Rights Commission of Sri Lanka Act No. 21 of 1996

109 The International Convention on the Elimination of All Forms of Racial Discrimination; The International Covenant on Economic Social and Cultural Rights; The International Covenant on Civil and Political Rights; The Convention on the Elimination of All Forms of Discrimination Against Women; The Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

RECOMMENDATIONS

The government of Sri Lanka must:

- Implement the Concluding Observations of the CEDAW Committee, which were presented during the review of the Sri Lankan government report in February 2011, following the 48th session of the CEDAW Committee. In its Concluding Observations, the CEDAW Committee urges the Sri Lankan government to “decriminalize sexual relationship between consenting adults of same sex, and abide by the obligation of non-discrimination under the Convention.”
- Implement the Conclusions and Recommendations of the Report of the United Nations High Commissioner for Human Rights on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation, gender identity and gender expression.
- Repeal Section 365A of the Penal Code which is read to criminalize consensual same-sex sexual relations between adults in public and private spaces.
- Take measures to prevent the Vagrancy Ordinance from being arbitrarily used against non-heteronormative women, transgender people and the nachchi community in Sri Lanka.
- Take measures to prevent the police from arbitrarily using Section 399 of the Penal Code (“Cheating by Personation”) against transgender people.
- Amend Article 12 (2) of the Constitution which deals with non-discrimination so that it explicitly includes sexual orientation, gender identity and gender expression among the prohibited grounds for discrimination.
- Adopt measures to protect the right to privacy as a Constitutional guarantee. Privacy is not a fundamental right in our constitution unlike other constitutions, such as in India. LGBT persons are frequently being “outed” against their will and they have no remedies available to them. The Internet fosters the violation of the right to privacy.¹¹⁰
- Encourage state and corporate sector employers to develop and implement uniform policies on sexual harassment at the workplace to enshrine principles of non-discrimination, explicitly taking into account harassment based on sexual orientation, gender identity and gender expression.
- Engage with organizations working with lesbians, bisexual women, transgender people and other sexual minorities with a view to developing and implementing policies that are sensitive to issues faced by lesbians, bisexual women and transgender people.
- Refer to the Yogyakarta Principles¹¹¹ as a guide to assist in policy development.
- Provide resources to the National Human Rights Commission so it can effectively implement the recommendations of the Asia Pacific Forum’s Advisory Council of Jurists on how to address violence, discrimination and criminalization of LGBT people.
- Implement sex education in schools in accordance with the Guidelines for Comprehensive Sexuality Education.

¹¹⁰ In addition, without a Constitutional right to privacy, the state adopts surveillance measures on the grounds of national security and uses technology to intrude into private lives.

¹¹¹ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. (2007) The Yogyakarta Principles are a set of principles relating to sexual orientation and gender identity and, intended to apply international human rights law standards to address the abuse of the human rights of LGBT people and issues of intersexuality. The Principles were developed at a meeting of the International Commission of Jurists, the International Service for Human Rights and human rights experts from around the world at Yogyakarta, Indonesia in 2006.

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APPENDIX A: TERMINOLOGY

When discussing issues relating to terminology, it has been quite a challenge to use terms such as “Sexual Orientation,” “Gender Identity,” “Gender Expression” and “Heteronormativity” in the vernacular (Sinhala and Tamil). For example, the Sinhala form of “Heteronormativity” is a sentence (ie: ‘*Wishama Lingika Sammathayak*’) as there is no single word to describe it.

Similarly, the formal term we used to describe “Sexual Orientation” in Sinhala is “*Lingika Namburuwa*.” However, this term had to be abandoned very often during the interviews as not many respondents were aware of its meaning. It was more useful to avoid formal terms altogether and simply ask respondents whether they preferred to have sexual and emotional relationships with either women or men or both.

Gender Identity has been translated into Sinhala as “*Sthree Purusha Samajabhawaya matha padanam wu ananyathawaya*.” This formal definition contrasted with the colloquial Sinhala of the interview, and could not be used without some explanation of its meaning. To explain, some researchers asked the respondent to take herself as an example and state whether she saw herself as a girl or not while preferring non-feminine/boyish/masculine clothing.

It has also been quite challenging to explore non-heteronormative sexual and gender identities within a non-western context, as in the case of Sri Lanka. A good example is the identity of the “transman.” Within a western context, a transman is usually defined as an individual who is biologically female and whose gender identity and gender expression are masculine; while he may/may not undergo surgery, he would carry on with his life as a man. However in Sri Lanka, although there have been a number of newspaper reports of women being “disguised” as men¹¹² or “impersonating” men, it is difficult to say whether gender expression in each case is legible as a trans-like gender identity. For instance, in some cases that have been documented by the WSG, the individual concerned said she/he preferred to take on a male persona in order to avoid the kinds of sexual harassment that women face on a daily basis. An added complication is that if such individuals live and “pass” on a daily basis, questions about being biologically female might put them at risk. Within the past year, however, there has been an increase in awareness on transgender issues, particularly amongst medical professionals.

112 “Boy Disguised as Girl since the Age of 18,” *Lankadeepa*, August 31, 2010; “Woman Disguised as a Male Army Officer Married to a Woman Following Mobile Phone Love Affair,” *Lankadeepa*, August 23 2010; “Women Disguised as Men (aka Tom Boys),” *Divaina*, May 17, 2009; “Person who had Disguised Himself as a Man for 20 Years Becomes a Woman at the Police Station,” *Lankadeepa*, January 3, 2009; “16-year-old Nomadic/ Gypsy Girl, Disguised as a Man, Arrested as a Suspect for a Murder Case,” *Lankadeepa*, May 11, 2005; “Boy becomes Girl at Dambulla Temple,” *Lankadeepa*, March 10, 2004; “Female Corporal Arrested on Charges of Giving Fake ID to Male Army Officer Disguised as a Female Army Officer,” *Sunday Lankadeepa*, January 18, 2003; “Case of Man Disguised as Woman,” *Sunday Lankadeepa*, July 20, 2003. Please see Appendix B for more details of archived media reports.

APPENDIX B:

GLOSSARY OF TERMS

Aappa: slang (derogatory) for ‘lesbian’ in the Sinhala language

Bisexual: a person who is emotionally and/or physically attracted to members of both the same and the opposite sex.

Butch: a masculine lesbian. Her masculinity could be expressed through masculine mannerisms, male clothing and/or haircuts. She is very comfortable with her female body and identity as a woman.

Cisgender: a cisgender person is someone who identifies as the gender/sex they were assigned at birth. For example, if your birth certificate says “female” and you identify as a “female woman,” you are a “cisgendered” person (as opposed to a transgendered person).

Femme: a feminine lesbian. Her femininity may or may not be expressed through makeup, high-heeled shoes and dresses. She could either be soft spoken, sweet and passive, or bold and aggressive. She is very comfortable with her female body and identity as a woman.

Gay: A person who is emotionally and/or physically attracted to members of the same sex. Although all-encompassing, this term refers mainly to men.

Gender: is a socially constructed concept, or social classification, of certain sets of behaviours, character traits and roles as feminine or masculine. Though the specifics of what may constitute feminine/female and masculine/male behaviours can vary across cultures, they uniformly impose a set of restrictions and rules on how each man or woman should behave in all areas of life.

Gender Binary: is the classification of sex and gender into two separate categories of masculine and feminine. Most societies divide people into these two distinct categories, which exclude many people who don’t fit neatly into either category.

Gender Identity: refers 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.

Gender Expression: refers to the external manifestation of one’s gender, usually expressed through “masculine,” “feminine” or gender variant dress, appearance, mannerisms, speech patterns, and behaviour. Gender expression is not necessarily an indication of sexual orientation or gender identity.

Heteronormativity: a view implying that all people fall into only one of two genders (i.e., male or female), that there are particular roles that men and women should follow, and that heterosexuality (i.e., attraction to the opposite sex/gender) is the only “normal” sexuality.

Heterosexism: refers to the belief that heterosexuality is the only “normal” and legitimate expression of sexual desire, intimacy and family life. It is institutionalized in societies around the world through laws, practices and cultural traditions.

Heterosexual: a person who is sexually, emotionally, and/or romantically attracted to the opposite sex.

Homosexual: a person who is sexually, emotionally, and/or romantically attracted to the same sex.

Homophobia: irrational fear, hatred, or prejudice towards homosexuals.

Intersex: a person who is born with external genitalia, or internal reproductive systems that are determined to be neither exclusively male nor female. Intersex people often have biological characteristics of both the male and female sexes. Intersex variations describe a large variety of conditions where a body varies from the male or female standard in areas such as chromosomes, hormonal makeup and genitalia. Intersex variations may be noticeable at birth or develop later

in life. The word “intersex” replaces “hermaphrodite,” which is generally considered impolite and/or derogatory.

LGBTIQ: an acronym which stands for Lesbian, Gay, Bisexual, Transgender, Intersex, Questioning and Queer. (Although more recently, with an increasing number of identity categories and labels this has expanded to LGBBHHTTQQI to include Lesbian, Gay, Bisexual, Bi-curious, Heterosexual, Homosexual, Transgender, Transsexual, Queer, Questioning and Intersex).

Lesbian: a woman who is emotionally and/or physically attracted to other women.

Non-Heteronormative Women / Men: is a term used to describe women / men who choose to live outside the heterosexist and heteronormative framework.

Ponnaya: derogatory slang in the Sinhala language, used to refer to a gay / effeminate man. It also has “multilayered meanings, and is used as a scornful characterization of men who have failed to meet Sri Lanka’s hegemonic standards of masculinity: a cuckolded husband, a man who fails to provide for his family, a man who is effeminate, a man whose sexual desire is for men” (Miller & Nichols, 2012: 557).

Queer: a person who transgresses established gender and/or sexual norms. Queer refers to LGBTIs as well as heterosexual persons who live outside heteronormative / heterosexist norms.

Sex: is the biological classification of bodies as male or female. At birth, infants are assigned a sex based on the socially constructed understanding of a certain combination of biological characteristics as representative of either male or female. These characteristics include chromosomes, hormones, internal reproductive organs and genitals.

Sexual Orientation: refers 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.

Transgender is an umbrella term for people whose gender identity, expression or behaviour is different from that typically associated with their assigned sex at birth, including but not limited to transsexuals, travestis, transvestites, transgenderists, cross-dressers, and gender non-conforming people. Transgender people may be heterosexual, lesbian, gay or bisexual. “Transgender,” as it is used in western societies, has limited resonance in many other countries. The term does not convey the multiple and diverse expressions of gender identity or the intersecting expressions of sexual desire, intimacy and gender nonconformity. For example, *Metis* in Nepal, like *Zananas* in Pakistan and *Travesti* in Argentina are effeminate men who have not surgically altered their bodies or transitioned to being women. *Hijra* in India may or may not be castrated and have sex with straight men but not gay men. In many cultures, the terms “third gender” or “other gender” are frequently preferred over “transgender.” In Sri Lanka, the *Nachchi* are “best characterized as both transgender and homosexual: they embrace a feminine gendered subjectivity, but with no interest in abandoning key facets of their “maleness,” and are also unwavering in their ardent sexual desire for men” (Miller & Nichols, 2012: 555).

Trans*: (with the asterisk) is a term that is used as an umbrella term to include all the identities within the gender identities spectrum. This can mean many experiences of sex and gender: trans, transsexual, transgender, genderqueer.

Transgender Man (Female-to-Male/FTM): refers to a person who identifies as male or masculine, but was assigned the female sex at birth and may or may not have been raised as a girl. Also known as Transman, FTM or F2M (female-to-male).

Transgender Woman (Male-to-Female/MTF): refers to a person who identifies as female or feminine, but was assigned the male sex at birth and may or may not have been raised as a boy. Also known as Transwoman, MTF or M2F (male-to-female).

Transphobia: prejudice against, and/or fear of trans* people, or anyone thought to be trans*. Transphobia can include violence, harassment and discrimination as well as the general idea that says everyone must fit into being male or female. Transphobia can be built into the way things work — for example being forced to use either a male or female bathroom or having to continually tick “male” or “female” when filling in forms. Homophobia works in the same way but is aimed at anyone seen as being outside heterosexuality.

Transsexual: refers to a person whose gender identity is different from their assigned sex at birth. Often transsexual people alter or wish to alter their bodies through hormones or surgery in order to make it match their gender identity.

Transition: transitioning often consists of a change in style of dress, selection of a new name, and a request that people use the correct pronoun. This may or may not include medical care like hormone therapy, counselling and/or surgery.

Transvestite: a person, usually a man, who derives pleasure from dressing in clothes usually worn by the opposite sex. Transvestites, like anyone else, may be gay, lesbian, bisexual, heterosexual, queer or something else.

APPENDIX C: METHODOLOGY

The WSG conducted qualitative interviews with 33 LBT¹¹³ respondents, all of whom were known to us through our organizational network. Although we wished to have a wider outreach for this study, it was quite difficult to do so, as a number of LBT individuals outside the network were not willing to be interviewed. In addition to the interviews with LBT respondents, we also interviewed 54 stakeholders.

Questionnaires were used during the interviews with both LBT and stakeholder respondents. While the LBT interviews were about two hours in duration (on average), the stakeholder interviews usually lasted for about an hour. The language of interviews was either Sinhala or English, depending on the participant’s language proficiency. All Tamil respondents preferred to be interviewed in English (there was provision for interviews to be conducted in Tamil).

Prior to interviewing, each respondent was informed of the aims and objectives of the research, and then required to sign the Consent Form. In addition to ensuring anonymity and confidentiality, the Consent Form also emphasised the voluntary nature of participation in the research project. Respondents could decline to answer any question and were also given the option of withdrawing from the interview at any time before or during the interview, without any explanation. They were also given the option of recalling their interview within three months of being interviewed. Two respondents recalled their interviews within the stipulated time period (reasons were not provided).

Some respondents said they may not be ideal candidates for a research study on violence; interestingly, though, it was revealed through

113 Although we use ‘LBT’ here, it must be noted that there were some respondents who preferred not to identify as either ‘lesbian’, ‘bisexual’ or ‘trans’. Please see Section IV: Interviewee Demographics for more details.

the interviews that they did have experiences of violence on the basis of their sexual orientation. It was also a point of interest that a number of respondents found it uncomfortable to refer to their parents or family members as “perpetrators,” even though they were the cause of their emotional/psychological violence.

Stakeholder interviews, conducted by two researchers, were often challenging. Both researchers had to face prejudice from potential participants who were not too keen to be interviewed, or who had anti-gay attitudes. In deciding who should interview stakeholders (many of whose attitudes on the subject were not known), we opted to be strategic and not choose researchers whose appearance—in combination with their research questions—could potentially provoke curiosity about their gender or sexuality. Despite this strategy however, both researchers who conducted stakeholder interviews had faced inappropriate questions such as,

“Are you being paid? If so, how much are you being paid to do this research?”

“Which countries are funding this research?”

“Why is it that you have long hair?”

“Do you have a boyfriend?”

Both researchers were instructed to record their experiences conducting interviews. We have reproduced some excerpts from their field notes to illustrate stakeholders’ attitudes.

STAKEHOLDER CATEGORY: LAWYER

Researcher’s Location: Urban

“When he heard the name of the research, he was very worried. He wanted to know how I had got his name and number. He said he did not want to be recorded. He asked me if I had a boyfriend and when I replied that I did not have one, he said he was not surprised, implying that if I continue to do research on such topics,

it would lessen my chances of finding a boyfriend. He also said that homosexuality is something that is hidden in our society, and that we should not try to unearth this rubbish because it would only make things worse. He noted that for many cases of divorce, they had cases where the husband was a gay man. In the end he agreed to be interviewed, but he wanted most of his views and attitudes to be off record.”

STAKEHOLDER CATEGORY: MEDICAL HEALTH

Researcher’s Location: Rural

“The doctor reprimanded me, especially because he knew my husband. He said he was very sad that his friend’s wife was doing such research. He also said that western culture is destroying our culture by being brought into our villages by this kind of research. I responded by saying that it [homosexuality] happened in the past during the ancient kingdoms. But he retorted by saying that I would not know this as I was not there during that time!”

STAKEHOLDER CATEGORY: MEDICAL HEALTH

Researcher’s Location: Rural

“This doctor had pointed out that many children were sent for counselling by their parents and teachers if they demonstrated any same-sex attraction. The counselling would put them back on the correct path. Even though this doctor was theoretically ok about homosexuality, he did not want to be supportive of it on record.”

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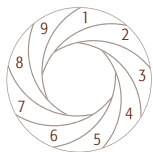


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Lesbians, bisexual women, and trans people (LBTs) in Japan, Malaysia, Pakistan, the Philippines, and Sri Lanka experience discrimination and exclusion in their communities and homes, at school, at work, and in public spaces. Legal protections and policy frameworks to address these issues are either non-existent or grossly inadequate. The result is preventable suffering and human rights violations.

This is the conclusion of field research undertaken by non-governmental and grassroots organizations working directly with LBT populations in 5 Asian countries, in collaboration with the International Gay and Lesbian Human Rights Commission (IGLHRC), and laid out in this report. Researchers interviewed LBT individuals as well as human rights activists, state officials, and other stakeholders, and through these testimonies painted a picture of systemic abuse and state-sponsored or condoned hostility. The researchers were themselves part of the target populations, and were able to add their own insights about exclusion and resistance to the analysis.

While sustained emotional violence took its toll, the individuals interviewed for this report showed great resilience and creativity, often banding together to transcend discrimination.

IGLHRC and its partners call on governments in the region to recognize the human rights and dignity of everyone, regardless of their sexual orientation or gender identity or expression.

This research is presented as a resource for LGBT organizations, national human rights institutions, government officials, and anyone who cares about equality and human rights.



I G L H R C

**INTERNATIONAL GAY AND LESBIAN
HUMAN RIGHTS COMMISSION**

80, Maiden Lane
New York, NY 10038
USA

T: +1-212- 430-6054

E: iglhrc@iglhrc.org

www.iglhrc.org • facebook.com/IGLHRC • [@iglhrc](https://twitter.com/iglhrc)