



NEPAL ADVOCACY FRAMEWORK

HIV, Human Rights and Sexual Orientation
and Gender Identity



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FOREWORD

On behalf of the Nepal Government, Ministry of Health and Population (MOHP), I am pleased to write this Foreword for the Nepal Advocacy Framework on HIV, Human Rights, and Sexual Orientation and Gender Identity. The Ministry along with Nepal's leading LGBT rights and human rights organizations, Blue Diamond Society (BDS), are co-branding this framework prepared by the United Nations Development Program's Asia-Pacific Regional Center (UNDP-APRC).

This framework will assist organizations in Nepal to work together on advocacy priorities for removing the legal and policy barriers that prevent gay men, men who have sex with men, and transgender people from enjoying their rights to physical and mental health, particularly in relation to access to HIV prevention, treatment and care.

It is focused as much on the government and our national AIDS program as it is on community organizations, as partnerships between the Nepal Government and civil society have proven to be an effective vehicle for change in this area.

I appreciate the efforts of UNDP-APRC in working with MOHP and BDS to prepare this timely and very important framework which will be of great use to us in Nepal. I wish the very best with the publication and dissemination of this document.



Kabiraj Khanal
Under-Secretary
Policy, Planning & International Cooperation Division
Ministry of Health & Population
Government of Nepal

ACKNOWLEDGEMENTS

The development of the *Nepal Advocacy Framework and Resource Guide: HIV, Human Rights and Sexual Orientation and Gender Identity* was the result of a consultative process between UNDP Asia Pacific Regional Centre and counterparts in Nepal from the government, community organizations, and the UN system. The Framework outlines national commitments related to HIV, human rights and sexual orientation and gender identity, and provides evidence for effective inclusion of specific MSM and transgender people strategies in national and community-level HIV responses.

This framework aims to assist organisations in Nepal to work together on advocacy priorities addressing the advocacy and legal barriers that prevent men who have sex with men and transgender people to access the highest attainable standard of physical and mental healthcare, particularly in relation to STI/HIV prevention, treatment and care.

The 'Fourth National AIDS Conference' convened by the National Centre for AIDS and STI Control on 1-4 December 2012 in Pokhara, Nepal provided a platform for LGBT and HIV activists and experts to present on their human rights and advocacy work and share their experiences. This enriched the conference and many participants were then able to contribute to the preparation of this Framework. The national conference brought together over 400 participants from the government, UN agencies, donor agencies, PLHIV groups, HIV advocacy organizations, LGBT organizations, human rights organizations and youth to share their good practices, lessons learned, and strategize for the way forward for the HIV response in Nepal.

Our thanks and special gratitude to Mr. Kabiraj Khanal, Joint-Secretary at the Ministry of Health and Population of the Government of Nepal for his guidance and feedback for the Framework and for providing the Foreword to this document. We also gratefully acknowledge the efforts of his staff and colleagues in shepherding the Framework through the necessary approval processes at the Ministry of Health and Population.

Thanks are due to the following senior staff of the Blue Diamond Society – Mr. Sunil Babu Pant, Executive Director and Founder, Manisha Dhakal, Deputy Director, and Saurav Jung Thapa, Technical Advisor for their coordination, substantive comments and suggestions that added much value to this national Framework.

Thanks are also extended to Dr. Ruben F. del Prado and Mr. Mahboob A. Rahman of UNAIDS Nepal for their valuable comments to the draft of the Framework.

The Framework was prepared by Lou McCallum and Amber McQuigh, AIDS Project Management Group (APMG) with Edmund Settle, Policy Advisor, UNDP Asia-Pacific Regional Centre.

The development of the *Nepal Advocacy Framework and Resource Guide: HIV, Human Rights and Sexual Orientation and Gender Identity* was supported by UNDP under the South Asia Multi-Country Global Fund Programme (MSA-910-G01-H).

INTRODUCTION

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

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



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

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

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

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

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

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

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

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

evidence; and MSM and transgender people community organizations are emerging across Pakistan.

PURPOSE OF THIS FRAMEWORK

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

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

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

HOW TO USE THIS FRAMEWORK

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

The Framework is backed-up by a Resource Guide that summarizes key global and regional commitments and guidelines and provides examples of work that has been done to remove access barriers for MSM and transgender people. The Resource Guide sets out the key clauses and sections of each relevant commitment document, the key sections of guidelines or standards that refer to MSM and transgender people and some of the elements of strategies that have been used in the region to promote access to health for MSM and transgender people. The Guide also contains country summaries of commitments and interventions from India, Sri Lanka, Nepal, Bangladesh and Bhutan.

Using the Regional Framework as a template, national organizations will be assisted to develop country-level Advocacy Frameworks. Groups and organizations working in advocacy partnerships

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

can use the Framework to develop partnership and organizational action plans to further the advocacy priorities they have developed.

The Framework is divided into the following sections:

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

SECTION 1: NEPAL OVERVIEW

In 2007 a writ petition submitted by petitioners representing organizations of minority people in terms of sexual orientation and gender identity was discussed by the Supreme Court of Nepal. In the historical case, *Sunil Babu Pant and others v Nepal Government and others* (2007), Sunil Pant along with other petitioners challenged the Court to consider the rights of sexual minorities as “citizens of equal standing in the eyes of the constitutional provisions of Nepal”. On December 21, 2007, the Supreme Court of Nepal ruled in favor of the LGBTI community ordering the government to issue citizenship identification to third genders, amend or scrap all discriminatory laws against LGBTI in Nepal and introduce same sex marriage law in Nepal. Following the Supreme Court decision the government of Nepal is considering proposals to introduce comprehensive legal protections from discrimination relating to sexuality and gender identity in the context of the drafting of a new Constitution.⁸

The 2010 Nepal Country Progress Report identified positive outcomes that resulted from the Supreme Court decision such as a dramatic reduction in violence against LGBTI from the state party; an increase in MSM/LGBTI openly disclosing their sexual orientation to their families and to the public; and, positive shifts in attitude among the general population, political parties, government, and the media towards LGBTI. The government has begun allocating funds for enabling the planning and implementation of programs that benefit this LGBTI and local district governments are supporting small-scale MSM/LGBTI programs. The official recognition of third gender in Nepal includes recent moves by the Home Ministry to issue citizenship documents for sexual and gender minorities (as an ‘other’ category) for those that request it without the need to submit any medical or other evidence.

The Supreme Court of Nepal has been proactive in applying protective provisions contained in international instruments and domestic laws to protect the interests of PLHIV and people with

⁸ Chris Beryrer, Stefan Baral, Frits van Griensven, Steven Goodreau, Suwat Charilertsak, Andrea Wirtz, Ron Brookmeyer, Global epidemiology of HIV infection in men who have sex with men, Lancet July 2012.

diverse SOGI. However, these policies and provisions do not have the force of law and thus are not binding or enforceable in Court.

National HIV/AIDS Strategy (2011-2016):

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

Goal: to achieve universal access to HIV prevention, treatment, care and support

Objectives:

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

Guiding Principles of the Strategy:

- **Universal Access to Prevention, Treatment, Care and Support services for all people on equitable basis**

- **Evidence-informed planning and programming**

Resource allocations must take into consideration defined priorities based on vulnerability and risk factors associated with various groups and communities after thorough analysis of issues including gender analysis

- **Reducing Stigma and discrimination**

Zero tolerance to stigma and discrimination in all aspects of the HIV and AIDS related service provision and in employment relationship, including recruitment, terms and conditions of employment and termination on the basis of real or perceived HIV status

- **Gender mainstreaming**

Gender sensitive (pro gender approaches recognizing the different needs and constraints of individuals based on their gender differences) and gender transformative (structural determinants and social norms) interventions/approaches will be employed in addressing short and long term issues related to HIV and AIDS.

- **Equity and Human Rights**

The response to HIV and AIDS will be gender and rights based with a specific focus on the rights of people infected and affected by HIV/AIDS as well as vulnerable people. As such, all aspects of human rights (such as confidentiality, right to health including sexual and reproductive rights of women and men, non-discrimination etc.) will be fully adhered to while providing HIV and AIDS related service to all Nepalese citizen. Equal and equitable access to prevention services is guaranteed for all members of key populations at higher risk of HIV as well as basic care and services is guaranteed for all persons infected by and affected by HIV.

SECTION 2: GLOBAL COMMITMENTS

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

GENERAL

Universal Declaration of Human Rights (1948)

Article 1

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

Article 2

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

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

Article 7

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

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

Article 7

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

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

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

Article 11

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

Article 12

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

International Covenant on Civil and Political Rights (1966)

Article 1

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

Article 17

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

Article 26

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

HIV AND AIDS

The Paris Declaration (1994)

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

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

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

Undertake in our national policies to:

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

Millennium Development Goal 6 (1994)

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

Target 6.A:

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

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

Target 6.B:

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

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

UNGASS Declaration on HIV/AIDS (2001)

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

Political Declaration on HIV/AIDS (2006)

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

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

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

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

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

SEXUAL MINORITIES

Yogyakarta Principles (2007)

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

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

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

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

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

PEPFAR Technical Guidance on Combination Prevention for MSM (2010)

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

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

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

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

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

SECTION 3: REGIONAL COMMITMENTS

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

Guiding Principles:

- Involve people living with HIV in all types of leadership and include young, women and members of vulnerable populations.

- Generate/ provide technical support for Member States for policy and programs for targeted and effective BCC strategies in prevention and health promotion (treatment, care and support) "The right prevention services for right people at the right time".
- Strong voice, policy and legislation support against gender inequality, stigma, discrimination, marginalization and criminalization of vulnerable populations.

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

Calls upon all members and associate members:

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

Requests the Executive Secretary:

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

Key points:

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

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

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

- Developing national strategic plans and establish strategic and operational partnerships at the national and community levels to scale up high-impact HIV prevention, treatment, care and support to achieve 80 per cent coverage for key affected populations with a view of the universal access target;
- Initiating, as appropriate, in line with national priorities, a review of national laws, policies and practices to enable the full achievement of universal access targets with a view to

eliminate all forms of discrimination against people at risk of infection or living with HIV, in particular key affected populations;

- Increasing the effectiveness of national responses by prioritizing high-impact interventions for key affected populations.

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

Sets out a Regional Framework for Action:

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

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

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

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

May 2015 – Seventy-first session of ESCAP

September 2015 – UN General Assembly Review MDGs

SECTION 4: THE CASE FOR INCLUSION OF SPECIFIC MSM AND TRANSGENDER POPULATION STRATEGIES IN HIV AND AIDS RESPONSES

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

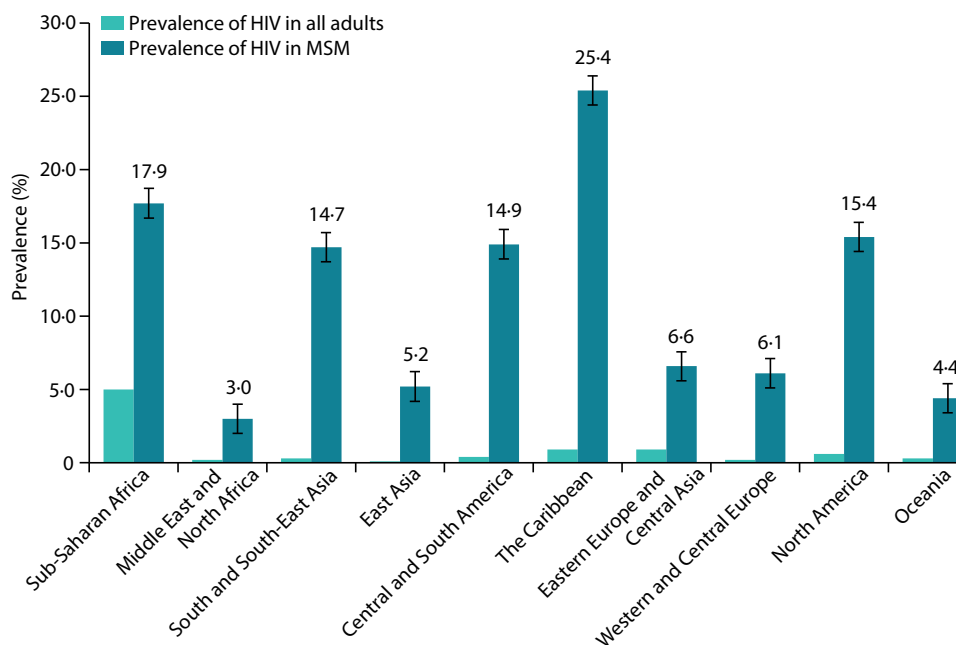
Rates of HIV among MSM and transgender people in many countries across the globe are significantly higher than rates in all adults. Some of the available data is summarized in the graph and table below.

Table 1: Nepal data⁹

Indicator	Estimate	Year
HIV prevalence among MSM (capital city)	3.8%	2009
Number of times higher than among general population	10.0	2009
Number of HIV-positive MSM needing ART	6,541	2009
Condom use during last encounter, MSM	75.3%	2009
Prevention knowledge	64.0%	2009
Reported vaginal sex in past month, MSM	66.0%	2007

⁹ HIV and Men who have Sex with Men: Country Snapshots - Nepal, UNDP, 2012..

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



Key concerns:

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

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

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

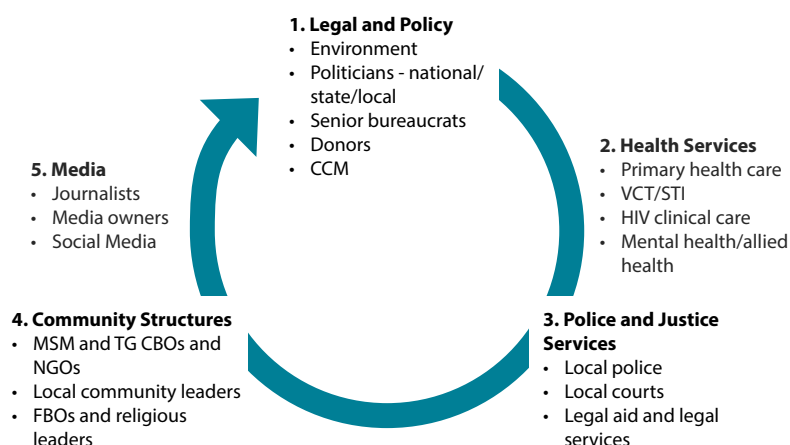
¹⁰ Chris Beryrer, Stefan Baral, Frits van Griensven, Steven Goodreau, Suwat Charilertsak, Andrea Wirtz, Ron Brookmeyer, Global epidemiology of HIV infection in men who have sex with men, Lancet July 2012

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

SECTION 5: KEY DOMAINS FOR ADVOCACY

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

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



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

Domains for Advocacy

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

FRAMEWORK FOR ACTION WITH EACH DOMAIN

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

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

DOMAIN 1 - LEGAL AND POLICY ENVIRONMENT

Key Priorities

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

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

Summary of the key legal and policy issues:

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

Summary of key recommendations:

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

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

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

MSM:

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

Countries must:

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

Transgender People:

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

Countries must:

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

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

Groups with Whom to Work in Partnership

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

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

Key Regional Strategies and Points of Influence

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

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

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

Key Resources

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

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

DOMAIN 2 - HEALTH SERVICES

Key Priorities

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

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

Groups with Whom to Work in Partnership

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

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

Key Regional Strategies and Points of Influence

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

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

Key Resources

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

- Clinical Guidelines for Sexual Health Care of MSM (International Union against Sexually Transmitted Infections, Asia Pacific Branch, 2005)
- Health sector response to HIV/AIDS among MSM, (WHO SEARO/WPRO, 2009)
- Developing a Comprehensive Package of Services to Reduce HIV among Men who have Sex with Men (MSM) and Transgender (TG) Populations in Asia and the Pacific – Regional Consensus Meeting (Bangkok), (UNDP, 2009)
- Ensuring universal access to comprehensive HIV services for MSM in Asia and the Pacific, (amfAR 2009) Priority HIV and sexual health interventions in the health sector for MSM and TG people in the Asia-Pacific Region, (WHO, 2010)
- HIV/AIDS Among Men who Have Sex with Men and Transgender Populations in South East Asia – the current situation and national responses, (WHO SEARO, 2010)
- Prevention and Treatment of HIV and Other Sexually Transmitted Infections Among Men Who Have Sex with Men and Transgender People - Recommendations for a public health approach, (WHO, 2011)

**DOMAIN 3 -
LOCAL POLICE
AND JUSTICE
SERVICES****Key Priorities**

Key priorities related to local police and justice services:

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

Groups with Whom to Work in Partnership

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

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

Key Strategies and Points of Influence

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

Key Resources

- Toolkit for Scaling Up HIV-related Legal Services - includes India case study, (IDLO, 2009)

- HIV-Related Legal Services: South Asia Video Conference report, (IDLO, 2012)

DOMAIN 4 - COMMUNITY STRUCTURES

Key Priorities

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

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

Groups with Whom to Work in Partnership

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

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

Key Strategies and Points of Influence

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

Key Resources

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

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

DOMAIN 5 - MEDIA

Key Priorities

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

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

Groups with Whom to Work in Partnership

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

Key Strategies and Points of Influence

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

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

Key Resources

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



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