

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.

Types of emotional violence against LBT people

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).

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

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>.

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

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

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.

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

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,” *Yogyakartaprinciples.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)

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.

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

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,

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

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

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.

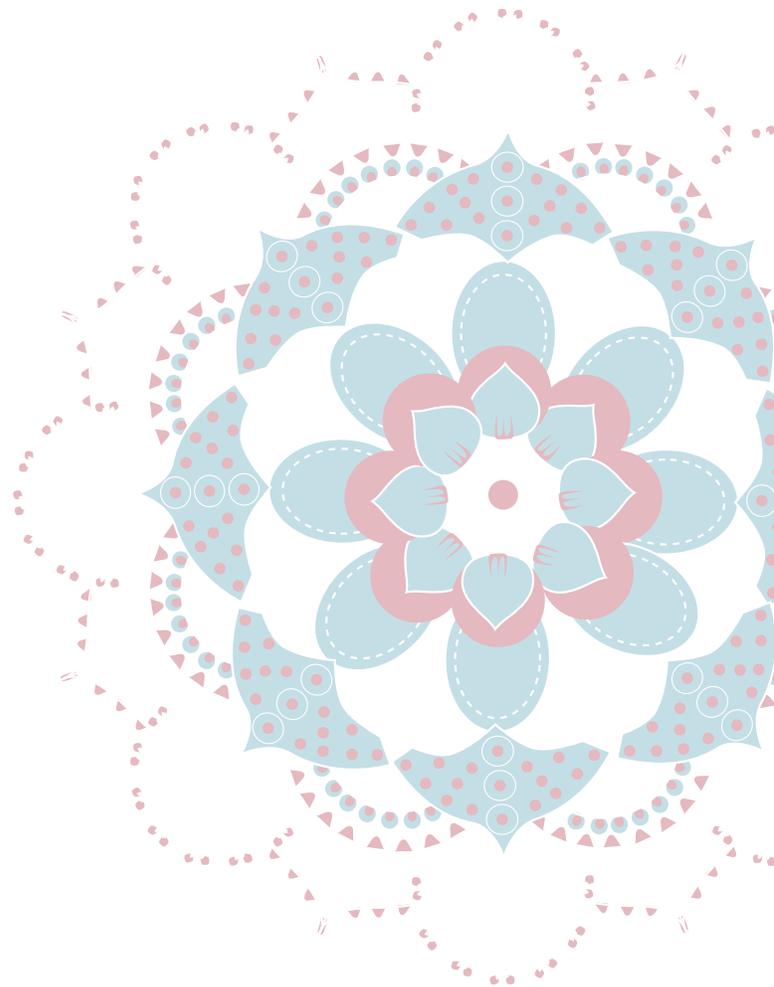
Anecdotal feedback from documenters indicated that most of the individuals who agreed to be interviewed wanted to help make a difference by revealing what had happened to them. All five studies documented ways in which LBT people coped with violence and daily discrimination despite the glaring lack of 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

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.

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,

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.

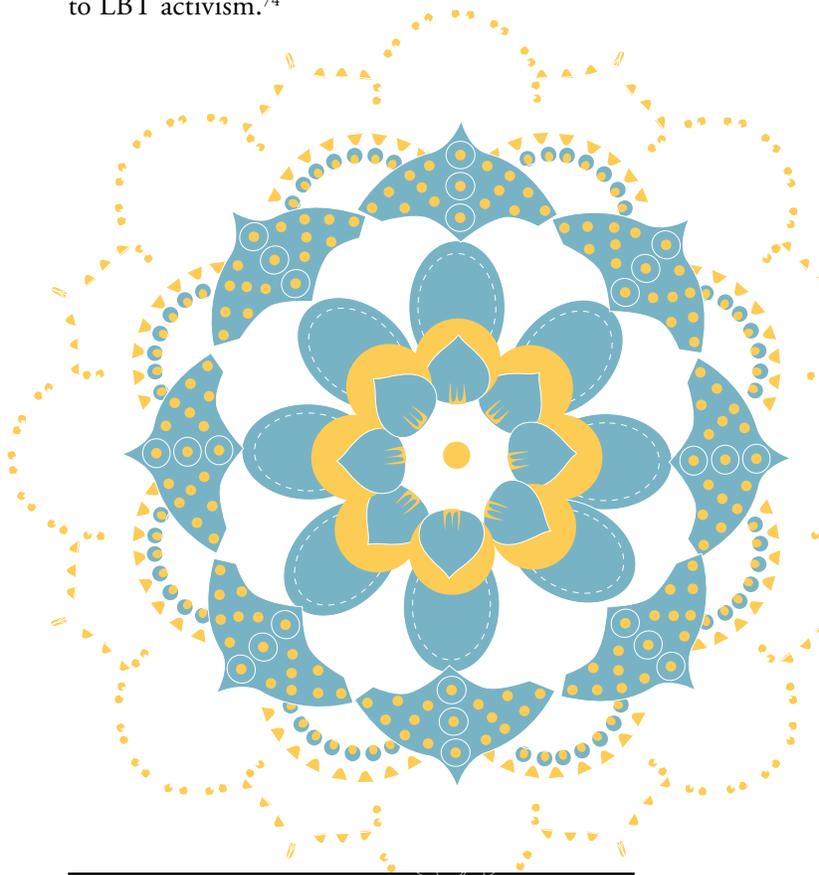
or in any way identify the purpose of the meeting. Safe times were identified, making sure that interviews were scheduled during the day or early evening hours. Interviews were conducted with one person at a time. Respondents' identities were not revealed or shared.

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_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 Laddad, 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-ishiharas-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
<p>No national law in Japan explicitly prohibits violence against women.</p> <p>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.</p>	<p>No federal or national law in Malaysia explicitly prohibits violence against women.</p> <p>Specific offenses such as domestic violence and rape are dealt with under the Penal Code or the law prohibiting spousal violence.</p>	<p>There is no national law in Pakistan that defines or prohibits violence against women.</p> <p>Specific offenses such as sexual assault and rape are dealt with under the Penal Code.</p>	<p>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.</p> <p>http://www.lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html</p>	<p>There is no national law in Sri Lanka that explicitly prohibits violence against women.</p> <p>Specific offenses such as spousal violence and rape are dealt with under the Penal Code.</p>

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

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
<p>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).</p> <p>http://www.gender.go.jp/e-vaw/law/sv.pdf</p> <p>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.</p>	<p>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.</p> <p>http://www.agc.gov.my/Akta/Vol.%2011/Act%20521.pdf</p>	<p>There is no law in Pakistan on domestic violence.</p>	<p>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.</p> <p>http://cedaw-seasia.org/docs/DomesticViolenceLegislation</p>	<p>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).</p> <p>http://www.documents.gov.lk/Acts/2005/Prevention%20Act%20No.%2034%20of%202005/H%2022927%20Prevention%20(E).pdf</p>

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.	<p>Sections 354, 354A and 355 prohibit sexual assault under the Pakistan Penal Code.</p> <p>Definitions of sexual assault are as follows:</p> <p>Section 354: "assault or criminal force to woman with intent to outrage her modesty."</p> <p>Section 354A: "assault or criminal force to woman and stripping her of her clothes."</p> <p>Section 355: "assault or criminal force with intent to dishonor person, otherwise than on grave provocation."</p>	Covered under Philippines Anti Rape Law of 1997.	<p>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.</p> <p>http://www.aidscontrol.gov.lk/web/Web%20uploads/Policy%20or%20Law/Penal%20Code%20(Amendment)%20Act,%20No.%2022%20of%201995.pdf</p>

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

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
<p>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.</p> <p>http://www.cas.go.jp/jp/seisaku/hourei/data/PC_2.pdf</p>	<p>Section 375 (g) of the Malaysia Penal Code prohibits sex with a girl under 16 years of age, with or without her consent.</p> <p>http://www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf</p>	<p>Section 375 (v) of the Pakistan Penal Code prohibits sexual intercourse with a girl under age 16, regardless of her consent.</p> <p>http://www.pakistani.org/pakistan/legislation/1860/actXL-Vof1860.html</p>	<p>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.</p> <p>http://lexoterica.wordpress.com/2011/07/20/june-2011-philippine-supreme-court-decisions-on-criminal-law-and-procedure-2/</p>	<p>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).</p>

HOW IS RAPE DEFINED? WHICH LAWS PROHIBIT RAPE?

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
<p>Articles 177 and 178 of the Japan Penal Code (Act No.45) of 1908 prohibit rape.</p> <p>http://www.cas.go.jp/jp/seisaku/hourei/data/PC_2.pdf</p> <p>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.</p> <p>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.</p> <p>Article 178 defines gang rape as above but perpetrated by two or more persons.</p>	<p>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.”</p> <p>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.</p> <p>http://www.wccpenang.org/rape/law-on-rape/</p> <p>http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf</p>	<p>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.</p> <p>http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html</p> <p>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.”</p> <p>http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord7_1979.html</p>	<p>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.</p> <p>http://pcw.gov.ph/law/republic-act-8353</p>	<p>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.</p> <p>http://www.aidscontrol.gov.lk/web/Web%20uploads/Policy%20or%20Law/Penal%20Code%20(Amendment)%20Act,%20No.%2022%20of%201995.pdf</p>

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#UuCWKrSlbcc	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
<p>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.</p> <p>http://www.kantei.go.jp/foreign/constitution_and_government/frame_01.html</p> <p>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."</p>	<p>Except for the legal age of marriage, there are no laws prohibiting forced marriage in Malaysia.</p>	<p>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.</p> <p>http://www.na.gov.pk/uploads/documents/1329729400_262.pdf</p>	<p>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.</p> <p>http://www.wedding-satwork.com/culture_laws_familycode01.shtml</p>	<p>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.</p>

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

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
<p>Article 731 of the Japan Civil Code stipulates that marital age is 16 for girls and 18 for boys.</p> <p>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</p> <p>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.</p> <p>http://www.cas.go.jp/jp/seisaku/hourei/data/PC_2.pdf</p> <p>The Child Welfare Act states that anyone below age 18 is considered a child.</p> <p>http://eiyaku.hounavi.jp/taiyaku/s22a16401.php</p>	<p>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.</p> <p>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.</p> <p>http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf</p> <p>The Child Act of 2001 defines a child as a person under 18 years of age.</p> <p>http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf</p>	<p>The age of sexual majority in Pakistan is confined to consent within cisgender, heterosexual, legally registered marriage.</p> <p>The Majority Act of 1875 determines age of majority or legal age for sexual consent as 18 for both women and men.</p> <p>http://www.albarrtrust.com/Al%20Baar%20Web/SCAN%20RULES/Majority%20Act%201875.pdf</p> <p>The Child Marriage Restrain Act of 1929 stipulates the marital age as 18 for boys and 16 for girls.</p> <p>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.</p>	<p>RA 6809 of the Philippines Family Code lowered the age of consent from age 21 to 18 for both girls and boys.</p> <p>http://www.chanrobles.com/repulicactno6809.htm#.UtzDFfawraY</p> <p>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.</p> <p>http://www.ageofconsent.com/philippines.htm</p>	<p>Age of consent in Sri Lanka is 16 for girls and boys.</p> <p>The Gross Indecency provision of Section 365(a) of the Penal Code stipulates that age of consent is below 16 for boys havng same sex relations if one partner is over 18.</p>

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
<p>Same-sex relations are not criminalized in Japan.</p>	<p>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.”</p> <p>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.</p>	<p>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.</p> <p>There are no known prosecutions under Section 377.</p> <p>http://www.pakistani.org/pakistan/legislation/1860/actXL-Vof1860.html.</p>	<p>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.</p>	<p>Section 365A of the Sri Lanka Penal Code (Amendment) No. 22 of 2005 criminalizes same-sex relations for both men and women.</p> <p>http://www.aidscontrol.gov.lk/web/Web%20uploads/Policy%20or%20Law/Penal%20Code%20(Amendment)%20Act,%20No.%2022%20of%201995.pdf</p>

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

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
<p>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.”</p> <p>http://www.kantei.go.jp/foreign/constitution_and_government/frame_01.html</p>	<p>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.”</p> <p>http://www.agc.gov.my/images/Personalisation/Buss/pdf/Federal%20Consti%20(BI%20text).pdf</p>	<p>Article 25 of the Pakistan Constitution declares equality and prohibits discrimination, including on the basis of sex.</p> <p>http://www.pakistani.org/pakistan/constitution/part2.ch1.html#f32</p>	<p>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.”</p> <p>http://www.lawphil.net/consti/cons1987.html</p>	<p>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.”</p> <p>http://www.supremecourt.lk/images/stories/supreme_court/constitution17th.pdf</p>

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

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
<p>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."</p> <p>http://www.kantei.go.jp/foreign/constitution_and_government/frame_01.html</p>	<p>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.</p>	<p>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).</p> <p>http://www.pakistani.org/pakistan/constitution/annex_objres.html</p> <p>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."</p> <p>http://www.pakistani.org/pakistan/constitution/part9.html</p>	<p>Article 2, Section 6 of the Philippines Constitution states that separation of Church and State shall be inviolable.</p> <p>http://www.lawphil.net/consti/cons1987.html</p> <p>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."</p> <p>http://www.chanrobles.com/presidentialdecreeno1083.htm#.UuCeErSlbcc</p>	<p>Sri Lanka has a dual legal system. The Marriage And Divorce Muslim Act of 1951 allows Muslim law to override secular law.</p> <p>http://www.srilankalaw.lk/revised-statutes/volume-iv/728.html</p>

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
<p>No laws in Japan include or specifically prohibit violence and/or discrimination on grounds of SOGIE.</p>	<p>No laws in Malaysia include or specifically prohibit violence and/or discrimination on grounds of SOGIE.</p>	<p>No laws in Pakistan include or specifically prohibit violence and/or discrimination on grounds of SOGIE.</p>	<p>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.</p> <p>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.</p> <p>http://www.chanrobles.com/article3.htm#.Ut-zH9Kwrbg</p>	<p>No laws in Sri Lanka include or specifically prohibit violence and/or discrimination on grounds of SOGIE.</p>

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

JAPAN	MALAYSIA	PAKISTAN	PHILIPPINES	SRI LANKA
<p>No laws in Japan are used to target LBT people for discrimination, intimidation, harassment, and/or criminalization.</p>	<p>Section 377A of the Penal Code criminalizes anal and oral sex, and applies to all people, but singles out same-sex sexual relations.</p> <p>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.”</p> <p>Section 21 of the Minor Offenses Act criminalizes drunken and disorderly behavior in public places and is used to arrest and detain trans women.</p> <p>http://www.agc.gov.my/Akta/Vol.%207/Act%20336.pdf</p> <p>Dangerous Drugs Act is used to conduct raids on gay clubs and establishments.</p> <p>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).</p>	<p>Under the Hudood Ordinance of 1979, all sexual activity outside heterosexual marriage, regardless of consent, is considered fornication, and as such automatically criminalized.</p> <p>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.</p>	<p>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.</p> <p>http://filipinawives.com/FamilyCodePhilippines.htm</p> <p>Section 5 of RA 9048 prohibits transgender and transsexual individuals from changing their first name or sex on their birth certificates.</p> <p>http://www.tsphilippines.com/</p> <p>RA 9208 or the Anti-Trafficking in Persons Law of 2003 is used to punish gay men clients of a sex worker.</p> <p>http://www.lawphil.net/statutes/repacts/ra2003/ra_9208_2003.html</p> <p>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.</p> <p>http://www.gov.ph/2013/02/06/repub-lic-act-no-10364/</p>	<p>Gross Indecency Law under Section 365A of the Penal Code (Amendment) No. 22 of 2005.</p> <p>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.</p> <p>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.</p>