



2018 HUMAN RIGHTS VIOLATIONS REPORT

SOUTH ASIAN HUMAN RIGHTS
ASSOCIATION OF PEOPLE
MARGINALIZED BECAUSE OF THEIR
SEXUALITIES AND GENDER
IDENTITY/EXPRESSION

CREDITS

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ABBREVIATIONS AND LIST OF TERMS¹⁾

Bisexual A person who emotionally and/or sexually is attracted to more than one gender.

Gender identity Refers to each person's internal and individual experience of gender, which may or may not correspond with the sex they were assigned at birth.

FRI The Norwegian Organization for Sexual and Gender Identity.

Heteronormativity The widespread idea that everyone is and/or should be heterosexual and identify as the same gender they were assigned by birth.

Homophobia The irrational hatred, intolerance, and fear of lesbian, gay and bisexual people.

Homosexual/Gay A man who is emotionally and/or sexually attracted to men. The terms homosexual and gay are sometimes also used to cover lesbian women and bisexual people, but this is disputed.

Intersex Intersex people are born with physical, hormonal or genetic features that are neither wholly female nor wholly male; or a combination of female and male; or neither female nor male

Lesbian A woman who is sexually and/or emotionally attracted to women.

LGBTI Lesbian, Gay, Bisexual, Transgender and Intersex.

Marginalised genders and sexualities All regional variations that exist of sexual orientation, gender identities and expression, such as hijra, zenana, kothi, nachi, meti, third gender, lesbian, gay, bisexual, transgender, intersex, and queer.

NHRC National Human Rights Commission.

SAHRA South Asia Human Rights Association of People Marginalised Because of their Sexualities and Gender Identity/Expression.

Sexual orientation Refers to each person's capacity for profound affection, emotional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender (ILGA).

SOGI Sexual Orientation and Gender Identity.

Transgender A person whose gender identity differs from the gender assigned to them at birth.

VISION

SAHRA believes in the inherent right to dignity, security, equal opportunity, and freedom of all in South Asia, regardless of their sexual orientations and gender identities and expressions. It envisages a world where every LGBTI person enjoys the human rights enshrined in the Universal Declaration of Human Rights (UDHR) and as expressed in the Yogyakarta Principles, and codified in the fundamental rights given in the respective constitutions of the South Asian countries.

MISSION

SAHRA's mission is to protect, promote, and fulfil the human rights of LGBTI persons and their defenders in South Asia by strengthening the impact and influence of organisations, advocates and movements working to advance the rights of LGBTI persons in the region; and by holding the South Asian states accountable for these rights.

INTRODUCTION

The human rights situation remains austere in South Asia. Repression is on the rise, with clampdown on civil society, increased restrictions on foreign funding, attempts to make human rights a dirty word, bloggers being hacked to death, religious extremism being used against sexual and gender minorities, the labelling of political dissent as anti-national and seditious, and increased hate crimes. Sexual and gender minorities are punished for their non-conformance to norms of “masculine” and “feminine” as also for their suspected sexual conduct. Societal expectations of sex and gender are barriers to extending rights to LGBTI (Lesbian, Gay, Bisexual, Transgender and Intersex) within South Asia.

The politicisation of religion for electoral gains is another menace faced by countries like Pakistan, India, Bangladesh and Sri Lanka. “Culture” as a monolithic realm of civilizational values becomes the precinct where political rhetoric, nationalism, religious intolerance combine to exclude sexual and gender minorities. Most countries in South Asia, except Nepal, continue to have “sodomy” laws which effectively criminalize consensual homosexual conduct, which is a part of colonial justice system. In addition, Pakistan has a second layer of religious laws against homosexuality, called the Hudood Ordinances, that make it the only country in the region which enforces whipping and death penalty for homosexuality.

It is extremely important to acknowledge that sexual and gender minorities are not isolated from structures of dominance

in the society. Imperialism, capitalism and state hegemony fuel the increase in violations and lead to marginalization.

It is important to critically analyse the legal and policy advocacy of sexual and gender minorities in light of recent struggles of other marginalised groups that often overlap with the LGBTI populations, such as women, dalits etc. The law often recognises violence in a way that it does not recognise many other acts, which opens the possibility of advocacy when documented instances of violence is at the center. Many social movements have spoken to the law in this language, by highlighting instances of violence, while the issues affecting them might be broader.

Despite the legal status and the positive legislations regarding transgender rights in some parts of South Asia, laws are still in place against ‘indecent’, ‘public nuisance’, ‘unnatural sex’ and sex work, that allow widespread police harassment of sexual and gender minorities. On a positive note, the sexual and gender minorities’ social status is consolidating in a slow manner, with transgender rights progressing at a faster pace than the rights of sexual minorities.

This consolidation is a result of a concerted effort of grassroots movements in the South Asian countries, led by Community-Based Organisations (CBOs) aiming to make governments more responsive to the needs of its citizens, without any discrimination on the basis of their sexual orientation and gender



Police turn into agents of extortion in India

This case from India presents the plight of an educated, young gay man when the police turn into agents of extortion and forcibly extract Rs 45,000 from him; all under the threat of booking the person under infamous Section 377 of the Indian Penal Code.

Bhuvan is a 22-year old, educated gay man working in a private enterprise. He got in touch with Anil on Grindr, a gay dating app, and as agreed, went over to Anil's house. After he reached the apartment in South Delhi, to his surprise he saw a few men entering, claiming to be from the police, who then forcibly took him to the local police station. Anil was let free. It was evident that Bhuvan was misled and Anil was in fact a police's agent for entrapment with the intention of extortion. The police detained Bhuvan for over five hours at the police station. Through his friends he contacted a CBO, which reached the police station for intervention. But by then the police had already blackmailed and threatened Bhuvan, extracted the PIN for the 2 ATM cards he was carrying, withdrawn Rs 40,000 from the two accounts, and also taken away the Rs 4500 cash that he had on his person. The CBO met Bhuvan, advised him to file a police complaint; however, the victim refused to do so. He was in state of shock and fear. This incident was traumatising for him.

This is a clear violation of privacy, dignity, and equality in the manner in which Section 377 is abused with impunity by police forces. Reason enough for this penal provision to be repealed.

identity. These movements are often supported financially and technically by international development partners.

Technical and financial support has primarily been within the framework of response to sexual and reproductive health needs, with relatively minimal investments for direct work on human rights. These minimal investments have primarily focused on building capacities, increasing human rights literacy and advocacy efforts. Hardly any effort has been made until now in strengthening the research capacity of grassroots level

organizations. This has led to an acute paucity of data for evidence-based advocacy work. SAHRA - The South Asia Human Rights Association of People Marginalised because of their Sexualities and Gender Identity/Expression, aims to address this gap through supporting documentation of human rights violations on the basis of sexual orientation and gender identity/expression, which could then be leveraged upon by the various organizations to analyse and generate evidence for their in-country advocacy initiatives.

SAHRA AND THE PROJECT

The South Asia Human Rights Association of People Marginalised Because of their Sexualities and Gender Identity/Expression (SAHRA), is a regional network of grassroots organisations and activists in South Asia, with a mission to systematically document human rights violations against sexual and gender minorities in the region, to respond to these violations, and to strongly advocate for an increase in the recognition, protection and promotion of human rights.

It was founded by a group of twenty human rights activists from Bangladesh, India, Nepal, Pakistan and Sri Lanka at a regional activist meeting convened in Kathmandu in September 2008. After national consultations with around 500 members from the different lesbian, gay, bisexual, transgender and intersex (LGBTI) communities in Nepal, India, Pakistan,

Bangladesh and Sri Lanka, an interim task force was formed. The interim task force finalised SAHRA's Constitution and identified partner organisations in the different countries and regions, who are using their community connections to document human rights violations and advocate for recognition of their human rights.

This effort is supported by FRI - The Norwegian Organization for Sexual and Gender Equality and implemented through LGBTI organizations, activists and networks in each of the countries.

21%

**OF THE PERPETRATORS
WERE THE POLICE**

8

**PEOPLE WERE MURDERED BECAUSE
OF THEIR SEXUAL ORIENTATION
OR GENDER IDENTITY**

23%

**OF THE PERPETRATORS
WERE FAMILY MEMBERS**

17

AGE OF THE YOUNGEST VICTIM

ABOUT THIS REPORT

This report presents a regional analysis of the rampant human rights violations experienced by sexual and gender minorities in six of the South Asian countries. The report captures only those violations that have been triggered on account of the sexual orientation and gender identity / expression of the victims. This lens makes the report probably the first of its kind at the South Asia level and contributes to filling a gap in the available research on the human rights violations experienced by sexual and gender minorities.

Sexual and gender minorities have not been a prioritised target group of public and academic research, and there is a dearth of systematic, high-quality data about their lives. Furthermore, due to factors such as underreporting by victims, criminalisation of homosexuality and non-conforming gender expressions, discrimination, lacking resources and corruption, human rights violations against sexual and gender minorities have not been sufficiently taken up and documented in the legal system.

The legitimacy and networks that SAHRA and its partner organisations have in the communities has given SAHRA a crucial access to, and trust of, populations that are otherwise underrepresented in official data and in academic research.

SAHRA believes that this report will strengthen the impact and influence of organisations, advocates, and movements working to advance the rights of persons who are marginalized due to their sexualities and gender identity/expression in the

region, and thus contribute towards an increase in the protection, promotion and fulfilment of the human rights of lesbian, gay, bisexual, transgender, and intersex persons and their defenders in South Asia.

This report includes analysis and presentation of 251 cases of human rights violations against sexual and gender minorities documented across Bangladesh, Bhutan, India, Nepal, Pakistan, and Sri Lanka in the year 2017.

Country Snapshots, also available along with this report, provide deeper insights into country-specific data and relates it to the larger country context.

24

PEOPLE WERE RAPED

61

PHYSICAL ASSAULTS

22

CASES OF SEXUAL HARASSMENT

39

UNLAWFUL ARRESTS

COUNTRY CONTEXT

Country situations, though varied, have similar archaic, regressive and prejudiced socio-legal and political environment and similar depressing attitude towards the human rights of LGBTI. Governments' responses range from being empathetic in Bhutan to tepid in Bangladesh. The rights of LGBTIs do not have a political sex appeal nor do they yield electoral dividends. Political parties know that. The LGBTI movement needs to be more politicized.

The fight for laws that protect human dignity continues. Recent court orders in India and Nepal and legislative processes set in motion in Pakistan do demonstrate the potential for change in the long term, but the path to be traversed is long and arduous. Not sure, how many more LGBTI persons' lives will be affected before the legislators respond to the need for more responsive and inclusive laws. Nepal, followed by India, does offer lessons in advocacy for other countries to adapt.

The media continues to dance to the popular tune, though we see sporadic instances of positive coverage in Bangladesh. However, in India we see a significant change in the attitude of the media, especially the major national media houses. Editorial positions on the need for repealing Section 377 and on protecting and promoting the rights of LGBTI persons is a result of over a decade's sustained advocacy with the media. An interesting development in India is the blossoming of 'queer media' that plays a role in highlighting LGBTI person's

lives and many a times feed into mainstream national media stories. Building strong allies with the media is essential. Bangladesh' experience with the Media Fellowship program has lots of potential to be adapted in other countries.

Civil society responses seem to show some promise, despite afflicted by inner rivalries and ever shrinking funds for human rights work. Whereas there is a need for upscaling investments in LGBTI human rights work across the six countries, the nature of existing financing needs a paradigm shift to explore linkages with activists and grass roots level community based organisations (CBOs) that are committed to change the discourse at the level that impact the day-to-day living of the LGBTI population. Bangladesh' experiment with seed grants for CBOs and building capacity for local advocacy, sustainability and resource mobilisation is a strategy worth exploring and investing in.

Some of the country-specific recent developments are presented on the next pages.

RECENT DEVELOPMENTS

BANGLADESH

Last year SAHRA reported that the National Human Rights Commission Bangladesh (NHRCB) were prioritizing marginalized and vulnerable populations including sexual and gender minorities in their Strategic Plan 2015-2019.

Now, to bring focus to their efforts, the NHRCB has set up a full-time desk for coordinating all actions towards protecting human rights of sexual and gender minorities. The staff for this position in NHRCB is seconded by SAHRA partner, Bandhu Social Welfare Society (Bandhu). The NHRCB is also pushing the Government to expedite the anti-discrimination legislation which has been made responsive to the sexual and gender minorities. Once the bill is passed, this law can safeguard the security and dignity of sexual and gender minorities. In a stark contrast to the NHRCB efforts, the national government voted against the United Nations resolution condemning death penalty for same-sex activity in late 2017.

In June and July 2015, a group of hijras were subjected to harassment and invasive and abusive physical examinations at a government hospital as a requirement to join a government employment program. In response to this, the NHRCB, in coordination with Bandhu, has released a publication on hijra identity aimed at public education to reduce such human

rights violations. With NHRCB's support Bandhu has also issued a written request to the Prime Minister's Office for actions towards putting an end to systematic violation of human rights.

Further, the NHRCB has requested the Bangladesh Bureau of Statistics for a survey of hijras. The third cycle of Universal Progress Report has been submitted to the Human Rights Council which recommends reforming laws and policies that affect LGBTI populations.

The seemingly positive responses of national and sub-national levels of administration can best be described as episodic and the institutionalization of these efforts still remain a distant dream.

BHUTAN

Last year SAHRA reported the inclusion of MSM and the transgender population in the National AIDS Control Program's integrated behavioural and biological survey, the inclusion of LGBTI issues in the national seminar on gender, the interviewing of LGBTI persons by state-owned national media, and the first ever national media advocacy on LGTI. The positive developments continued in 2017 as well. The Royal Bhutan Police has decided to introduce a procedural guidebook on the LGBTI community in the country to understand their needs.

The first “HIV & SOGIE reporting guide for the Bhutanese media” was developed through a partnership between UNDP, Bhutan Media Foundation and LHAK-SAM. Journalists were trained using the guidelines and the change in the nature of reporting is already visible.

In the context of health needs of the LGBTI populations in Bhutan, the National HIV & AIDS and STI Strategic Plan 2017-2023 acknowledges the need for interventions with gay men, men who have sex with men and other key affected populations.

However, in contrast to these positive developments, the Bhutan Vulnerability Baseline Assessment 2016 released by the Gross National Happiness Commission Secretariat excluded the LGBTI population from the list of sixteen groups that it categorised as ‘vulnerable’.

INDIA

Last year, we reported about the landmark decision by the Supreme Court of India that in the National Legal Services Authority (NALSA) vs Union of India case (commonly referred to as the NALSA judgment) affirmed that the fundamental rights enshrined in the Constitution of India are equally applicable to the transgender population. Meanwhile in the legislative front, a bill has been drafted by the Parliament of India, purportedly to protect and promote transgender rights. However, this bill

has many problematic areas and has been opposed by most transgender and LGBTI groups. It is widely believed that if the bill is passed in its present form, it will restrict the rights of trans persons from what was given by the NALSA judgment. The LGBT community in India should make it their first priority to ensure that the government does not succeed in passing the transgender rights bill in its present form.

While India continues to have criminalisation of homosexuality, on account of Section 377 of the Indian Penal Code, there is also a judgment that was passed by the Supreme Court of India, dealing with matters of privacy, in which it has explicitly said that sexuality and/or sexual orientation is a protected fundamental right of every citizen of India within the ambit of privacy.

This led to a situation where simultaneously there is protection of sexuality as a fundamental right and criminalisation of homosexuality. The Supreme Court of India has stated that it will take up the matter of section 377 and examine its constitutionality very soon.

NEPAL

Last year SAHRA reported the inclusion of sexual and gender minorities’ rights and entitlements in the NHRC mandate and report in some of the national policies, and also referred to provisioning of budgets for LGBTI people by local govern-



Rapist let free due to loophole in anti-sodomy law in India

The 19-year old trans woman from India, who works as a beautician in a beauty parlor, was gang raped by four men in a public place after cornering her. Despite being traumatized and brutally injured, she fled the spot. With the help of her family, she mustered the courage to file a police report. The perpetrators were arrested, only to be released shortly without any charge using a loophole in the anti sodomy law. This creates a dangerous precedence that can be interpreted as a license to rape trans women.



Unlawful arrest by police followed by outraging the modesty and dignity of trans woman in Nepal

Monika Pariyar, a 25-year old, uneducated trans woman sex worker was on her way back home with her trans women friends. To their surprise they found a police vehicle stopping them. They were forcefully taken to the police station. In one of the officer's room, they were forced by the police to unclot themselves. Helpless and engulfed in shame, they complied. The police took their naked photos. In an inhuman act, the police forced Monika and her friends to eat condoms.

ments, districts and village committees. The environment is evolving, albeit in a mixed manner.

Whereas there is legislative protection for LGBTI people, there is yet no provision of same-sex marriage in the civil code. Recommendations related to legalizing same-sex marriage have not been paid heed to.

2017 also saw the Supreme Court of Nepal judgment that those who have received citizenship on their birth assigned sex now can change according to the gender they identify as. Further, the Supreme Court has issued a directive to the government that all other identity documents such as school certificates also must be changed in compliance with the latest judgment.

PAKISTAN

In August 2017, The Transgender Persons (Protection of Rights) Bill 2017, submitted to the Senate and National Assembly, seeks to address some of fundamental rights of transgender population of Pakistan. Although the functional committee on Human rights of the Senate has approved the Bill, it still needs to be passed on the floor of the Senate.

For the first time ever in January 2017, the Lahore High Court decided for the inclusion of the transgender community in the population and housing census of 2017. Also for the first time, the Senate constituted a special committee to propose measures to address the problems being faced by marginalized segments of society, including the transgender population.

A task force was constituted by the Federal Ombudsmen to address the violations of the rights of transgender people in Pakistan, to reform the policies and to work with the Law enforcement agencies, Judiciary, Health and The National Database and Registration Authority (NADRA).

In August 2017, NADRA has upgraded its policy for registration of transgender people. Those who do not have information about their parents can also obtain CNICs (Computerised National Identity Cards) under the name of their Guru/Mentor. Subsequently and for the first time in Pakistan, a trans man successfully changed his CNIC from "female" to "male".

The National Commission for Human Rights (NCHR) is preparing draft law with Sindh Assembly for provision of rights to transgender people who are currently deprived of all fundamental rights.

The Government of Khyber Pakhtunkhwa has formed a first-of-its kind committee called "Chief Minister's Special Committee on the rights of Transgender Persons". Women Parliamentary Caucus (KP) moved a resolution in Khyber Pakhtunkhwa Assembly calling for the political empowerment and inclusion of transgender and intersex community. For the first time in the budget history of Khyber Pakhtunkhwa, the provincial government allocated 200 Million Rupees for transgender in the fiscal year 2016-17.

In June 2017, the government has issued its first third-gender passport to a transgender activist in Peshawar.

The efforts at the national level and by some of the provincial governments are a indications of increased recognition of the third gender population in the country. Undoubtedly, the voices of activists are being heard. The large number of such efforts also point towards an increased openness among the policy makers regarding the human rights of sexual and gender minorities, and provide an opportunity to activists for further intensifying their advocacy efforts.

Although education, employment and health are major concerns in which the LGBTI community faces discrimination, a serious concern is lack of safety and security, often compounded by extortion, blackmail and violence by the police.

SRI LANKA

Last year SAHRA reported on gender recognition certificates being issued by the Government, that is likely to benefit transgender persons. Although this was a positive step taken, lack of awareness and knowledge among government officers in assisting trans persons with legal document changes has resulted in transgender persons facing significant challenges.

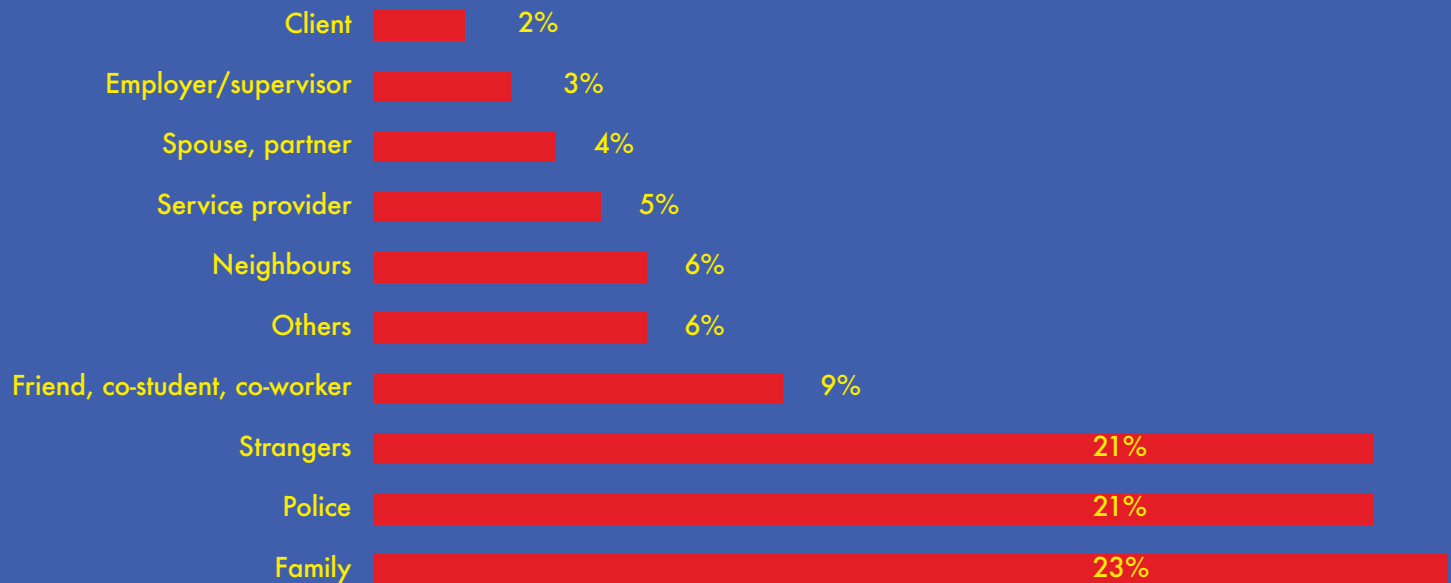
The National Action Plan for the protection and promotion of Human Rights for 2017–2021 consisted of recommendations for non-discrimination on the basis of gender identity. However, the action plan did not include ‘sexual orientation’ as a ground for non-discrimination.

The Deputy Solicitor General who represented Sri Lanka at the Universal Periodic Review (UPR) in Geneva stated that

the government will look to reforming the laws of Sri Lanka to ensure protection of sexual and gender minorities.

However, there has been no significant progress in reforms for laws that are more inclusive of and sensitive towards the sexual and gender minorities in Sri Lanka.

RELATION BETWEEN THE PERPETRATOR AND THE VICTIM



(n=251)



Unlawful termination from the Navy

Zain is a 21 years old man who joined the Bangladeshi Navy. He had always done his duty and the Navy authorities has praised him for his performance. One day, one of his colleagues told the Navy authorities that Zain was involved in a sexual relationship with another man. The Navy responded by imprisoning both of the accused men for a month without any lawful means. After that, they were terminated and denied their salary. Now, the two of them are jobless and without any social security.

Zain did not take any initiatives against the decision of the Navy because of the fear of the social stigma and criminalization by the law.

This decision by the Navy curtailed the fundamental rights of the victims as enumerated in the Bangladesh constitution and also tarnished the dignity of the victims. The State must ensure equality for its all citizen. It is one of the pillars of fundamental human rights.

DATA AND FINDINGS

METHODS AND LIMITATIONS

In 2017 SAHRA has 251 cases documented across six countries, including violations that may have occurred even prior to 2017 but has come to our knowledge and therefore been documented this year. Only those cases of violation are documented here where the victim was targeted due to his / her / their sexual orientation or gender identity. Cases where this connection has not been clear are not included in this analysis.

How are cases documented and by whom?

- ◆ Staff and volunteers designated under SAHRA by the partner organisations and dedicated community members were trained on human rights violation documentation in all countries.
- ◆ Trained staff, volunteers, CBO members, Steering Committee members report cases as and when they get to know of any such instances. In addition, legal helplines and tele-counselling services operated by country partners in Bangladesh, Nepal and Sri Lanka are used to identify cases for documentation.
- ◆ Cases are also reported through the media, social media or connections with other human rights movements.
- ◆ Wherever possible and appropriate, victims and witnesses have been interviewed, and information collected and validated.

Challenges in documentation and quality of data

- ◆ Victims and witnesses are often unwilling to report human rights violations. This unwillingness stems from concerns for personal safety, traumatisation of victims, fear of re-traumatisation, fear of archaic laws which criminalizes same-sex sexual activity, and lacking incentives to report without any remuneration or reward.
- ◆ A factor that impedes reporting of violations and violence is the normalization of violence in the lives of many LGBTI individuals, where their existence in a milieu of repeated violations has numbed them to the imagination that they are being violated. In other words, many individuals do not recognise that what is happening to them is a violation of their rights.
- ◆ As only those victims and witnesses familiar with SAHRA and the SAHRA partners report the human rights violations they have experienced, it may be assumed that the data captures only a small portion of the total violations taking place in the countries. The voices of the most marginalised communities is most likely under-represented. In particular, SAHRA has been unable to capture cases from regions where there is no network of CBOs linked up with the country partner.
- ◆ Most of the information in the database is verified through interviews with the victims. As such, the database consists of first-hand accounts of human rights violations. As no incentives are offered and no rewards given to the victims, and as they often report at great emotional costs and

despite threats to their personal safety, we have little reason to believe that the victims willingly report erroneous data. The victim's reports are verified through documentation such as medical records, media clips, photographs and witness statements to the extent possible.

Data analysis and limitations

- ◆ The data recording template is not designed with the rigour needed for advanced statistical analysis. As such basic descriptive statistical tools have been used alongside basic bi-variate analysis of some variables to identify trends.
- ◆ All trends presented here are valid only for project data and at the most be interpreted as indicative of larger picture, bearing in mind that the sample size per country is not large enough for any statistical inferences and hence not be considered as a representative picture of the human rights violations faced by sexual and gender minorities in South Asia as a whole. Drawing country specific inferences from a data set demands the sample to be randomly selected from a sampling frame where every element in the sample has an equal probability of being selected. This is not possible as the data used for this report is from cases of human rights violations that are documented as they get known to the SAHRA team through their networks, and therefore is more a function of data collection and outreach strategy than a representation of the sample frame, and therefore is likely to have a strong bias.

VIOLATIONS REPORTED IN 2017

TOTAL CASES REPORTED BY COUNTRY

Indiscriminate acts of violence against the LGBTI population pose significant challenges to the protection of human rights in South Asia. Their winter of discontent is far from over.

In 2017, the SAHRA network recorded 251 cases as against 202 in 2016. India continue to contribute the largest share of cases (36%), followed by Nepal (21%), Sri Lanka (18%) and Pakistan and Bangladesh (12% each). Bhutan started reporting last year as an effort put together by individual activists. They have reported five cases as compared to two cases last year.

SUMMARY

Cases are recorded in an environment that is repressive. Fearless voices that champion the cause and explicitly advocate for their rights exist in different countries. Such voices co-exist with a vast majority of community voices that remain petrified by regressive laws, suppressed by prejudiced society and silenced by the might of the religious and fascist forces in a predominantly heteronormative space.

As such, the total number of cases recorded are just the tip of the iceberg; the large majority of the violations remain unknown, unheard and therefore unreported. The impact of the few fearless voices are documented in the country contexts. Once the still-silenced large majority feel empowered to speak,

the change will be fast tracked. As SAHRA, our endeavours are aimed towards reaching this large majority.

TYPES OF VIOLATIONS, SEXUAL ORIENTATION AND GENDER IDENTITY

“When sorrows come, they come not single spies. But in battalions!”
Hamlet, William Shakespeare

So do human rights violations. The figures presented here are of primary violations but be it borne in mind that with every primary violation, victims experience a range of other violations. Data reveals that violations like sexual harassment and physical assault are preceded with or followed by verbal abuse, blackmail and threats in more than 90 per cent of the cases.

In 2017, we documented that 8 people were murdered because of their sexual orientation and gender identity. 22 people were raped; 24 were sexually harassed – together constituting almost one fifth of the total reported cases.

All 251 documented cases can be disaggregated into 14 different kinds of violations. 73 per cent of the cases across 6 countries are from trans women, whereas lesbian women constituted only three per cent of the cases. Data reveal that trans women and gay men are either more prone to violence or that the outreach strategies of the country partners are more geared towards these two groups. SAHRA is committed to

increase outreach to LBT groups for overcoming the challenges related to identification of violations among this community. The table on page 26 presents the number of cases documented by types of violation and gender identity.

The top five violations that constitute 73 per cent of the reported cases are physical assault, unlawful arrest, verbal abuse, rape and sexual harassment.

Of all the six countries: India has reported highest shares of murder, rape and physical assault. The largest share of sexual harassment cases is from Sri Lanka. The largest share of unlawful arrest cases is from Nepal. Analysis of top three violations from each country show most of the cases from Nepal (50%) are of unlawful arrest. Physical assault tops the list in Bangladesh (24%), India (29%) and Sri Lanka (25%). Page 26.

SUMMARY

Violations are rampant despite the existence of laws. The spectrum of violence that ranges from verbal abuse to sexual harassment, rape and murder outrages humanity. On probing the victims, it is clear that all cases of violations are because of their sexual orientation or gender identity and expression (SOGIE). Judging by the extent of impunity with which they perpetrate violence, perpetrators seem to believe that it is their right to violate because of the SOGIE of the victims, despite the existence of general laws that prohibit such acts. It is a re-



The kidnapping of a transwoman

The case shows how transwomen are seen as sexual objects in Pakistan, making them vulnerable to violence and harassment.

Zainab is a 24 year old transwoman living in Lahore. Zainab was repeatedly approached by an acquaintance called Ali. Ali asked her for sex, but she refused. Ali then threatened and abused her over the phone, and Zainab told her boyfriend about the incident.

A few days later, Ali turned up at Zainab's flat and forced her to go with him to his home. When Zainab arrived there were three other men there, all of them were smoking and were drunk. They snatched her mobile, so that she could not tell anyone where she was. The four men then started abusing her and harassing her and tried to convince her to have sex. She was not allowed to leave and she was very afraid. Luckily her boyfriend, when he realised she was not at home and her phone was off, thought of Ali and found out where he lived. Her boyfriend negotiated with Ali and he let Zainab go. Her boyfriend had to promise that if Zainab should be released, they could not report the kidnapping to the police.

After this incidence Zainab is afraid to dance at public functions because this is where she met Ali. She is therefore losing the income from the functions, and she is traumatised by the kidnapping.

flection of times where the governance structures and judicial system are rendered insignificant by their inaction. Responsive laws are essential, but not adequate. Where is the enforcement? Where is the accountability?

OUT STATUS REGARDING SEXUAL ORIENTATION AND GENDER IDENTITY AND EXPOSURE TO VIOLENCE

41 per cent (n = 102) of the total violations documented are experienced by those who are open or “out” about their sexual orientation and gender identity. The share of those who are out to some extent or the other (either to most people or to some people) is 89 per cent. 94 per cent of those who were ‘out’ are unmarried.

Those who were ‘not out’ about their identity were highest in Sri Lanka at 25 percent followed by Bangladesh at 21 per cent. Whereas those ‘out in public’ are more prone to physical assault, cases of those who are ‘out to some’ reveal highest incidence of unlawful arrest.

SUMMARY

The overwhelmingly high incidence of those who are out in the open, whilst also being unmarried, show how the institution of marriage in a heteronormative society suppresses the expression of one’s own sexual orientation and gender identity.

Sexual and gender minorities who are open about their sexual orientation or gender identity (either open in public or open to most or open to some) are reporting a greater number of human rights violations. From the data we see a conundrum: while being out exposes LGBTI persons to a range of human rights violations, not being out increases vulnerability to blackmail and extortion. Is expression of one’s identity not a part of democratic right? Indeed, “Democracy is a word all public men use and none understand”, to quote George Bernard Shaw.

WHO ARE GETTING VIOLATED?

Age of victims

Across six countries, the majority (46%) of the victims are in the age group of 14-25 years. 14 per cent of them are above 35 years.

The largest share of victims in Bangladesh (52%), Bhutan (100%), and Nepal (62%) are in the age group 14-25 years

In India (42%) and Pakistan (47%), there is an equal split of victims in the age groups 14-25 years and 26-35 years.

The youngest victims are 17 years old, from India, Nepal and Sri Lanka. The oldest victim is from Sri Lanka (68 years).

Whereas most of the violations experienced by people in the

VIOLATION BY TYPE:

Violation by type	Lesbian Women	Gay Men	Trans Women	Trans Men	Bisexual Women	Bisexual Men	Inter-sex	Unknown	Total
Murder			8						8
Attempted murder									
Rape		5	16		1			2	24
Sexual harassment	1	4	15	2					22
Physical assault	3	5	46	2	2	1	1	1	61
Police custody/fair trial									
Unlawful arrest	3	3	32	1					39
Outing		3	2						5
Discrimination, denied service		2	16	3		1			22
Threats									
Blackmailing		1	2						3
Verbal abuse		7	23	4	1	1			36
Property damage, inheritance		3	14						17
Eviction, discrimination in rent		2	7					1	10
Others		2	1	1					4
TOTAL	7	37	182	13	4	3	1	4	251

BANGLADESH	BHUTAN	INDIA	NEPAL	PAKISTAN	SRI LANKA
Physical assault 24%	Rape 40%	Physical assault 29%	Unlawful arrest 50%	Verbal abuse 27%	Physical assault 25%
Verbal abuse 21%	Verbal abuse 40%	Rape 18%	Physical assault 25%	Sexual harass. 23%	Sexual harass. 23%
Unlawful arrest 14%	Physical assault 20 %	Property dispute 14%	Verbal abuse 15%	Physical assault 10%	Verbal abuse 14%

age group of 14–25 years is verbal abuse (22%) followed by physical assault (19 per cent), in all age brackets above 25 years, we see a predominance of physical assault.

Victims in the age group of 14-25 years suffered from 54 per cent of all rape cases, 45 per cent of all sexual harassment cases, 51 per cent of all unlawful arrests and 69 per cent of all verbal abuse cases. Five of the eight murders documented were also in the age group of 14 to 25 years. There is a clear case for greater investments in working with and empowering the younger LGBTI by building appropriate support systems that are responsive to their challenges.

Educational background of victims

Whereas 26 per cent of the victims across the six countries had no education, 22 per cent of them had higher education. The majority (31%) of the victims had pre-primary and primary education. Overall, the trend we reported last year continues: There is under-reporting among people with lower education levels.

For the first time we have analyzed data to look for trends in types of violations and educational background of victims. 67 per cent of total rape cases and 73 per cent of the total sexual harassment cases are from victims with secondary or higher education. Among those with primary education or less (including no education) we see 67 per cent of all cases of

physical assault, 74 per cent of all cases of unlawful arrest and 67 per cent of all property disputes (53% of total property disputes are from LGBTI with no formal education background). Most of the transwomen have less education, and they are more visible. Both these factors accentuate their vulnerability. Their limited ability to seek justice further compounds the problem.

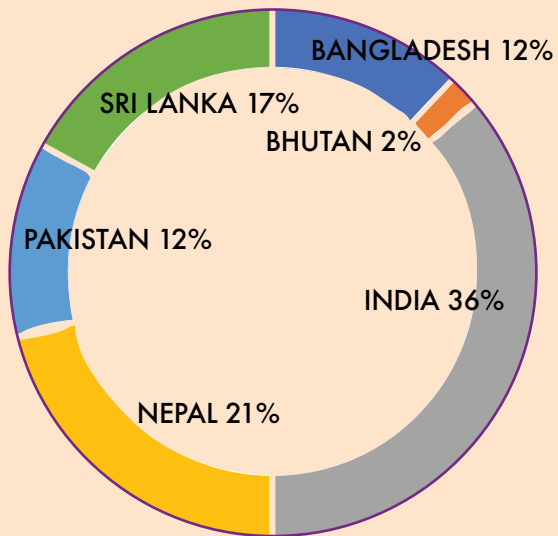
Profession of victims

The largest share of victims are sex workers (34 per cent), followed by people working in the private formal and informal sectors (22%). Twelve per cent of the victims are students, and NGOs workers constitute ten per cent of the victims.

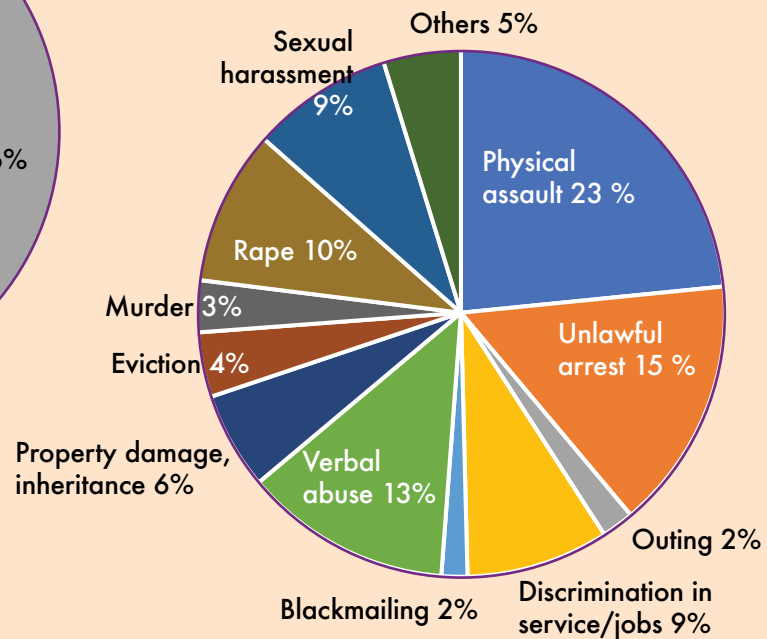
Like last year, we see an over-representation of sexual and gender minorities in sex work. This is consistent with other studies, and point toward the marginalization faced by this community and the difficulty of accessing other forms of employment. Insights into the data, especially from Nepal, clearly point towards the fact that decriminalization of same sex relationships is an essential step but in itself it may not be adequate, unless larger challenges related to stigma and discrimination remain unaddressed. In Nepal, where same sex relationships have been decriminalized, discrimination and stigma still leave a disproportionate number of LGBTI persons with little choice other than sex work. This is especially true for trans women. First-hand accounts of victims indicate that because of the

DOCUMENTATION IN 2017:

VIOLATIONS BY COUNTRY:

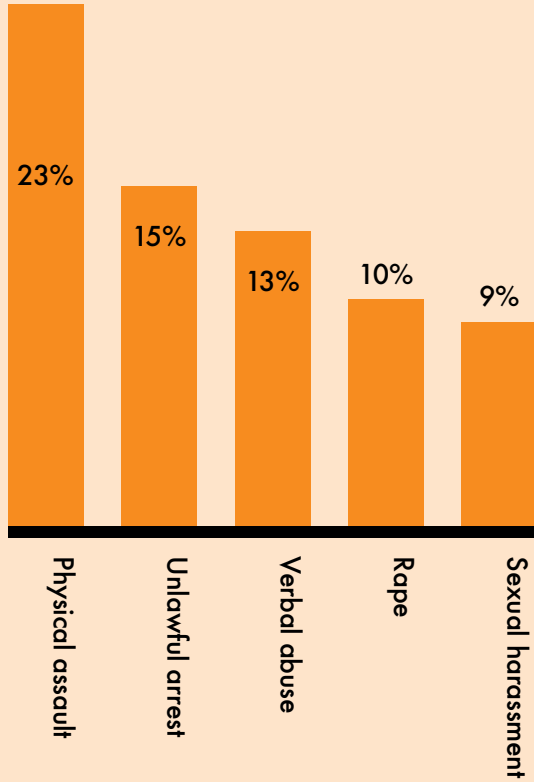


VIOLATIONS BY CASE:

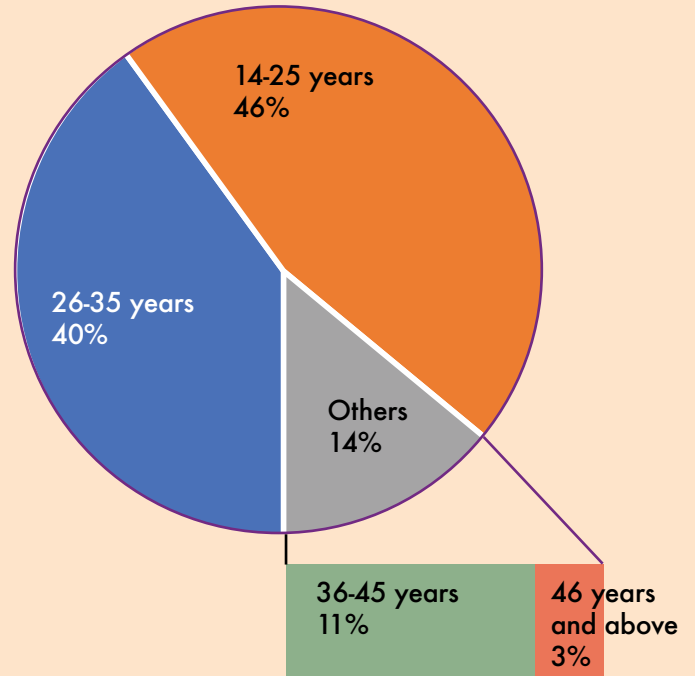


TOP FIVE VIOLATIONS:

Constituting 73 % of reported cases in 2017



AGE OF VICTIMS:



link between being a trans woman and being a sex worker, the police harass a lot of trans women on suspicion of being sex workers. And even when sex work is not criminalised, sex workers are common suspects for petty crimes like theft.

Civil status

88 per cent of the victims were unmarried. All 5 victims in Bhutan were married. Among the remaining countries, the number of victims who were unmarried is the highest in Bangladesh (97%), followed by Pakistan (93%), Nepal (92%), India (87%) and Sri Lanka (75%). Pressure to get married is a violation that rarely gets reported and existing social and legal structures do not provide any redress for this. Though we see that a high percentage of the victims are unmarried, evidence from all the six countries indicate high levels of family and social pressure to get married, that at times borders on physical assault, verbal abuse and mental torture. The predominantly heteronormative South Asian culture stigmatizes remaining unmarried.

SUMMARY

The glory and the dream of the LGBTI youth seems to be losing ground. As we report 46 per cent of the cases under the age of 25 and another 51 per cent between 26 and 45 years – economically the most productive age group, the promises in the National Youth Policies of each of the six countries read like hollow dreams. Whereas the Sri Lanka youth policy is ‘guided by a core set of humanizing ethics and values’ and

India envisions ‘to empower its youth to achieve their full potential’, Pakistan says ‘Youth is our future, youth is our asset’. Bangladesh, Nepal and Bhutan policies have a similar octave. The agonizing cries of the youth that comprise almost half of our recorded cases are a study in contrast. Our governments remain indifferent, while the sexual and gender minorities bewail:

*Whither has fled the visionary gleam?
Where is it now, the glory and the dream?
Ode on the Intimations of Immortality,
William Wordsworth*

It is time for our Governments to look at their youth policies and make good their promises of empowerment, skills development and creating livelihood options without any discrimination based on SOGIE, to ensure that those in sex work have the option to get out of intense and double discrimination. Our call for LGBTI friendly policies within the education sector still remains unheard as twelve per cent of the victims are students.

WHO ARE THE PERPETRATORS?

Their relationship with victims

The milk of human kindness seems to have stocked out of families of sexual and gender minorities. Most of the violence across the six countries is inflicted by families (including spouses).

The protectors of law, the police, are the second largest group of perpetrators (21%).

The share of violations from the police is the highest among the cases in Nepal (56 per cent) as compared to a low of 11 per cent in Sri Lanka and India. This is fourteen per cent in Bangladesh and seventeen per cent in Pakistan.

The share of violations within the family is the highest among the cases in India (42%) and the lowest in Nepal, at twelve per cent. Sri Lanka is a distant second (25%), followed by Bhutan (20%), Pakistan (17%) and Bangladesh (14%).

SUMMARY

Families, friends, neighbours, relatives, workplace and even the police hardly leave any social space that the sexual and gender minorities can feel safe in. This shrinking social space and the hostility surrounding it create the invisibility and the silence of the LGBTI population. This invisibility further leads to lack of reporting as we will see in the following section, and thus it contributes to dearth of data and evidence for influencing

systemic corrective measures. This vicious trap provides a breeding ground for the prejudiced to continue perpetrating. The invisibility continues, so does silence. In the process, we lose lives, lose opportunities, lose self-esteem and therefore lose the meaning of life and living. It is not surprising that mental health concerns among LGBTI persons are on the rise. A systematic review²⁾ of mental health concerns among LGBTI persons has reference to more than 13,000 papers on this subject in peer reviewed journals, including grey literature, over a period of three and a half decades. LGBTI populations are severely exposed to at least eight (access to drugs and alcohol, displacement, isolation and alienation, peer rejection, poor social circumstances, poverty, violence, unemployment) of the 16 risk factors indicated in its Social, Environmental and Economic Determinants of Mental Health by the WHO.³⁾

FILING OF COMPLAINTS

Where are the complaints filed?

For an overwhelming 69 percent of the violations no complaints were filed to anyone. Only 17 per cent of the cases were reported to the police either directly by the victim or through a CSO/NGO. 12 per cent of the cases were filed with the CSO /NGO, which tried to deal with it at its own level.

Only ten per cent of the total sexual harassment cases documented and only seventeen per cent of total rape cases documented were reported to the police. Of the total unlawful



State machinery misused to impose heterosexual marriage on a lesbian couple

One of the two adult girls in a lesbian relationship were under severe pressure from her family to consent for heterosexual marriage. The lesbian couple worked in the same factory, so colleagues had some inkling about the relationship, though none intruded into their private space.

Not being able to handle the family pressure and being mentally tortured, the couple eloped to find a sojourn in a city hotel. Their parents approached the police to file a complaint; even though there was no crime committed, the police accepted the complaint, and within days arrested the couple from the hotel they were in. Shocked and traumatized, the couple remained in police custody until being handed over to their parents. The pressure to marry resumed and increased.

The incident reveals how LGBTI persons are subjected to forced marriages and how little space they have in making decisions about their own lives within the existing socio-legal context in Sri Lanka.

arrests (n=39), complaints were filed against the police for only 31 per cent. Police responsiveness is extremely important as the data reveals 41 per cent of the violations occur in public places.

Twelve per cent of the violations were complained to the CSO/NGO who tried to deal with it at their own level.

On reporting to the police

Only eighteen per cent of the cases were reported to the police. Though 59 per cent of these cases (n = 44) were accepted, insensitivity of the law enforcement agencies is evident from the fact that 18 per cent were rejected and no complaint was registered. Across six countries, the police demanded a bribe and/or sexual favours for about five per cent of the cases that were reported to them. This was most acute in Bangladesh where the police demanded bribes or sexual favours in one out of every four cases that were taken to them.

The reason why the vast majority of victims (82 per cent) are not reporting to the police is that there exists a deep distrust between the LGBTI population and the law enforcement agencies.

None of the cases from Bhutan and Sri Lanka were reported to the police. This share was 91 per cent in India, followed by 87 per cent in Pakistan, 72 per cent in Bangladesh and 54 per cent in Nepal. This provides insights into the kinds of

advocacy interventions that need to be strategized in the different countries.

31 percent of the victims across the six countries who did not report to the police thought the police would reject their case. The fear of police arrest due to the victim's sexual orientation or gender identity is a stark commentary on the misuse of punitive laws by the police and further justifies the need for repealing laws criminalizing same-sex sexual activity.

SUMMARY

It is a travesty of justice and a mockery of constitutional rights if 69 per cent of the victims do not find the environment enabling even to file a complaint against human rights violations. The distrust in the police is a cause of serious concern that questions the governance fabric of all the six countries. This further substantiates the need to remove the laws that criminalise LGBTI persons. No wonder that the lives of LGBTI are steeped in uncertainty. Their ability to freely access services and opportunities is severely compromised.

CONCLUSIONS

The consequences of human rights violations, including the direct and indirect psychosocial impact, are well documented. Human rights violations prevent sexual and gender minorities in South Asia from accessing education, employment and opportunities, and affect their potential to contribute to the society. With most of the violations faced by the LGBTI persons in the economically most productive age group, the impact on the economy at the micro and the macro levels cannot be underestimated.

Evidence from the South Asian countries shows that LGBTI persons are vulnerable to mental health disorders. Post-traumatic stress disorders are likely to be quite common among this population. Whereas countries are gearing up their responses to non-communicable diseases and mental health issues and aligning the national responses to the Sustainable Development Goals (SDG), across the South Asia region, we do not see any visible effort towards integrating these issues in our response towards protecting the human rights of LGBTI.

Upholding LGBTI human rights and advocating for sensitive laws and access to justice for the LGBTI populations can directly contribute to SDG 16 (Promote peaceful & inclusive societies for sustainable development, provide access to justice for all & build effective, accountable and inclusive institutions at all levels³). Advocacy efforts of all SAHRA partners has the potential to contribute to both the results under this SDG (Result 16.1: Significantly reduce all forms of violence and related

deaths everywhere; & Result 16B: Promote & enforce non-discriminatory laws and policies for sustainable development). Without this, the LGBTI populations will remain excluded from the social mainstream.

The cost of this exclusion and repression is likely to be on the entire economy, more immediately and directly on the health sector due to increasing burden of non-communicable diseases and mental health. SDG Result 3.4 under SDG 3 ‘By 2030, reducing by one third pre-mature mortality from NCD through prevention and treatment and promote mental health well-being’ will remain a distant dream if concerted and multi-stakeholder (including the government) efforts are not put in place towards protecting the human rights of LGBTI.

A fitting conclusion to this report is an excerpt from the 27 October 2017 release from the UN News Center:

“Lesbian, gay, bisexual and transgender (LGBT) people suffer a crucible of egregious violations, including killings, rape, mutilation, torture, arbitrary detention, abduction, harassment, physical and mental assaults...noting that they are subjected to lashings and forced surgical interventions, bullying from a young age, incitement to hatred and pressures leading to suicide.”

<http://www.un.org/apps/news/story.asp?NewsID=57981#.Wnri72Z7FTY>

RECOMMENDATIONS

Based on the current social, political, cultural and religious contexts as well as the trends emerging from the documentation of human rights violations, SAHRA would like to submit the following recommendations:

TO GOVERNMENTS⁴⁾

Acknowledge and accept the existence of the sexual and gender minorities in the country.

Reform punitive laws, policies and law enforcement practices to protect the rights of people who are marginalised due to their sexualities and genders.

Implement the directions laid down by the judicial system in order to recognize and fulfil the human rights of transgender persons.

End impunity against those who commit violence and discrimination against sexual and gender minorities.

TO NATIONAL HUMAN RIGHTS COMMISSIONS

Recognise that the rights of sexual and gender minorities are human rights, and integrate this group into your work.

TO FUNDING ORGANIZATIONS

Recognize the need to support the promotion of human rights for sexual and gender minorities.

TO CIVIL SOCIETY ORGANIZATIONS⁵⁾

Recognize the rights of sexual and gender minorities within the human rights framework and development agendas.

Develop an understanding of marginalization, violence and discrimination that includes marginalised sexualities and genders.

Collaborate with sexual and gender minority movements in the respective countries to demand for their recognition and the realization of human rights.

TO ACADEMIC INSTITUTIONS, ACADEMICS AND RESEARCHERS

Build knowledge and scholarship on issues related to sexual and gender minorities that are led by and grounded in the realities of the community.

TO THE MEDIA

Highlight the human rights violations faced by sexual and gender minorities and sensitize the general public on marginalised sexualities and genders.

Strive to imbibe rights affirming principles when reporting on issues related to sexual and gender minorities.

TO FAITH-BASED ORGANIZATIONS

Recognize the human rights and human dignity of sexual and gender minorities.

Advocate for the acceptance and inclusion of people who are marginalised because of their sexualities and genders within faith communities.

Speak out against violence and enticement to violence by religious leaders.

As we move ahead ...

The journey towards social inclusion of sexual and gender minorities continue to be a bed of thorns.

The fight against sexual prejudice and stigma needs to continue. Decades of denial need to end. Specific forms, causes, and consequences of abuses based on sexual orientation and gender identity need to be more comprehensively documented and researched.

SAHRA will continue to support the cause with its limited resources as we believe this has a strong leveraging effect on the ongoing human rights work by the country partners supported through other donors. Our strategies will be refocussed to ensure more equitable representation of cases across gender and sexual identities, especially lesbian and bisexual women and trans men.

FOOTNOTES:

- 1) The list is adapted from ILGA – International lesbian, gay, bisexual, trans and intersex association.
- 2) King, M., Semlyen, J., Tai, S. S., Killaspy, H., Osborn, D., Popelyuk, D., & Nazareth, I. (2008). A systematic review of mental disorder, suicide, and deliberate self harm in lesbian, gay and bisexual people. *BMC psychiatry*, 8(1), 70.
- 3) WHO (2004), *Prevention of Mental Disorders – Effective Interventions and Policy Options, Summary Report*.
- 4) Including policy makers, legislative members and law enforcement agencies.
- 5) Civil Society Organizations include community based and national organizations, human rights organizations, development organizations, and, organizations working with several constituencies including young people and women.



SAHRA