

The Global Commission on HIV and the Law: Transgender People

HIV and the Law: Risks, Rights and Health is a July 2012 report by the Global Commission on HIV and the Law. The Commission was an independent body of experts and respected statespersons established by United Nations Development Programme to address the ways in which human rights abuses, stigma, and discrimination fuel the global HIV epidemic. The Commission set out to examine where and how these abuses were occurring and to consider how legal reforms—through new legislation, better enforcement of existing law, and court decisions—could slow the spread of HIV and reduce its impact.

The Commission conducted an eighteen month process of research, consultation, analysis, discussion, and decision-making. They held regional dialogues in seven global regions and collected **written and oral submissions from over 1000 individuals and organizations**, more than 700 of whom included people living with, or directly affected by HIV and AIDS.

The report is an important tool for civil society groups, particularly those working with populations at high risk of HIV. This briefing paper highlights the report's findings about transgender people. It offers information and language that may be useful for advocacy, campaigning, and lobbying.

Key Report Findings on Transgender People

Transgender people face human rights violations.

- ▶ The violations experienced by transgender people are broad-ranging and varied, from laws against cross-dressing, to denial of health care, to discrimination in employment and housing, to violent attacks and murder. In many countries, people are arrested and imprisoned for appearance or behavior that “imitates the opposite sex” (page 51). A survey of transgender people in the United States found that 19 percent had been refused medical care and 28 percent reported harassment in a medical setting because of their transgender or gender non-conforming status (page 52).

In particular, transwomen who are from a racial minority face added danger because they live at the intersection of multiple oppressions. The report notes that “transgender sex workers often bear the brunt of police brutality where sex work is criminalized” (page 52). In Colombia, advocates recorded and condemned the murders of 45 transwomen between 2005 and 2011 (page 52). The U.S.-based National Coalition of Anti-Violence Programs documented that transwomen were the victims in 44 percent of hate crime murders of LGBTQ people in 2010. Often when such crimes occur, “complaints have nowhere to be lodged and, even when channels exist, the petitions of transgender people are often ignored” (page 52).

Transphobia increases HIV risk, particularly among transwomen.

- ▶ “In some countries transgender women become infected with HIV at more than seven times the national rate” (page 52). This is likely caused by multiple factors including:
 - Inability to find legal employment, which increases reliance on sex work for survival.

- Lack of access to targeted, appropriate medical care and prevention services (which stems from a lack of trans-competent providers), absence of funding for trans-focused health programming, and inability to register for health care due to identity paper problems.
- Higher rates of clinical depression among transpeople because of relentless stigmatization (page 52).

Lack of legal gender recognition for transgender people is widespread.

- ▶ There are still few states that recognize the right of a transgender person to have their self-identified gender recognized under the law and in personal documentation and records (page 51). This lack of recognition impacts on access to employment, health care, travel, and participation in society, which can increase vulnerability to HIV and poor health outcomes.

The number of countries passing legislation to recognize transgender people and their rights is increasing.

- ▶ The report cites 20 countries that have recently passed legislation to recognize the right to “legal sex change, registration of identification documents in accordance with lived gender and prohibition of discrimination against people of non-conforming gender” (page 53). Examples of progressive legislation on legal gender recognition include laws passed in Argentina in 2012, Uruguay in 2009, and Portugal in 2011 (page 53). The Argentinian law in particular is worth highlighting, as it was the first to enable self-identification without the need for any form of medical intervention, as the basis for changing one’s legal gender (over the age of 18). The law also made sex-change surgery a legal right.

Actions the Report Recommends (page 54)

To respect human rights and create effective, sustainable national HIV responses, countries must:

- ▶ Stop punishing transgender people for being who they are. Instead, repeal laws that criminalize behaviors associated with transgender identity and amend anti-discrimination laws to explicitly include gender identity, non-conforming gender status, and sexual orientation.
- ▶ Ensure that transgender people have access to health care supplies and services (including preventive services) in non-discriminatory environments, as well as access to health care personnel trained to respond to their unique medical and health needs.
- ▶ Remove existing barriers (whether legal, administrative, or regulatory) that prohibit transgender and people of non-conforming gender status from forming public community organizations and associations.
- ▶ Recognize and respect existing civil and religious laws and practices that support individual privacy.
- ▶ Change laws and administrative policies to enable transgender people to obtain identification documents that reflect their lived gender, whether or not they have undergone any gender-related medical procedures.

How You Can Use the Report

This report provides concrete precedents and examples you can use as evidence when advocating to government and other influential organizations, the media, civil society organizations, and the general public. Because of the report's legitimacy as an official UN document, these case studies and the statements made about them are important tools to support your advocacy, campaigning, and lobbying.

1. To show that countries have begun explicitly acknowledging transgender rights.

The report describes recent changes to the law in four countries—Argentina, Uruguay, India, and Portugal—that have substantially improved access to transgender rights (page 52). Pages 52–53 mentioned improvements in several other countries as well. These examples demonstrate that gender recognition for transgender people is growing across different parts of the world, with varying political, legal, social, and religious contexts.

This trend, and the fact that a high-level international body like the Commission has recommended legal gender recognition as a response to HIV, may help your organization mobilize allies to decide what laws you would most like to change, and how. This is the first step in the process of recruiting allies from other interest groups—human rights advocates, HIV and AIDS response leaders, and others—to join you in developing and implementing a long-term strategy for legislative change.

2. To call for seats at the table for transgender people and their allies.

This report does not explicitly cite examples of transgender advocates demanding and winning seats on the planning bodies responsible for their country's National Strategic Plan for HIV/AIDS. But, if your country receives U.S. government funding through the President's Emergency Plan for AIDS Relief (PEPFAR), be advised that each recipient country must develop a 5-year strategic framework showing how its National Strategic Plan was developed through a collaborative, consultative process. This means involving government's personnel, U.S. government personnel (USAID, the Centers for Disease Control, Peace Corps, etc.), in-country stakeholders from civil society, private sector businesses and business coalitions, funders, and other relevant organizations such as UNAIDS.

This requirement gives you a legitimate reason to ask your Ministry of Health how transgender people's needs are represented in this planning

process. Before doing this, it is best to review a copy of your country’s National Strategic Plan for HIV/AIDS carefully to see where and how transgender people are mentioned in it. If the Ministry of Health is not receptive, local parliamentarians may support your request if they are sympathetic to the needs of transgender people. National HIV and AIDS response organizations that are already participating in such bodies can also be recruited as allies.

3. To gather evidence that transgender rights are a public health issue.

Unfortunately, there are very few comprehensive studies examining the factors that contribute to HIV risk among transgender people. On page 52, the report mentioned a U.S.-based survey of over 6,000 transgender people that yielded important data. You can use this study as an example when talking to public health experts and academics in your region to see if any of them are interested in developing similar research projects in your area. The evidence collected through such research can become a powerful tool for generating the support needed to change laws and administrative practices. **Community-Based Participatory Research** is a methodology particularly well-suited to gathering information from, and collaborating effectively with, key populations to build an evidence base.

4. Consider Legal Action.

Legal challenges to denials of transgender people’s rights have been upheld in national courts in Fiji, Hong Kong, Nepal, the Philippines, South Korea, and more (page 52). The Supreme Court of Pakistan ruled in 2009 that, “transgender citizens should have equal rights and access to state benefits such as government financial support schemes and should enjoy protections guaranteed by the Constitution of Pakistan” (page 53).

Depending on the legal system in your country, challenging existing laws in court can result in judicial decisions that have far-reaching effects. At the same time, the process of pursuing a court

case is labor-intensive, can take years to complete, and may result in media coverage and public focus on the transgender community that may or may not be wanted. But, if you can get local human rights organizations and entities that provide pro bono legal representation to take on your challenge, and support advocacy around the case, it may yield a decision that improves the situation in your country.

“Sound Bite” Quotes

One benefit of this report is that it simply and eloquently frames key arguments we make as we advocate for change in existing policies. These are listed below as sound bites that organizations can use in their own documents or when talking to the media. Citing the Global Commission on HIV and the Law may add credibility for audiences who are less receptive to such arguments.

- ▶ “The denial of papers is one of the most concrete, bureaucratic means by which the law erases the personhood of the transgendered. What is also prohibited in many states is the daily, basic expression of self” (page 51).
- ▶ “Laws prohibiting—or interpreted by the police or courts as prohibiting—gender nonconformity, defined vaguely or broadly, are often cruelly enforced” (page 8).
- ▶ “Such abusive practices ... are not simply the aberrant acts of a small number of poorly trained officers. In many cases, the police commit violent or discriminatory acts because the law and social attitudes at least tacitly authorize them to do so, in the name of public safety, order, or morality” (page 27).
- ▶ “Transphobia, a bigotry often encoded in the law, is a mental health risk to its victims, data show. According to some research, transgender women and men show increased levels of depression and

suicidal ideation, and emotional vulnerability can translate into vulnerability to HIV” (page 52).

- ▶ “Not only do states fail to protect HIV-vulnerable people from violence or ensure access to justice, governments stand by as their agents administer

society’s messages of disgust and contempt ... Together, punitive laws, discriminatory enforcement, and systematic bars to justice violate the basic human rights of key populations; in fact, they practically guarantee such violation” (page 27).

Open Society Public Health Program

The Public Health Program of the Open Society Foundations aims to build societies committed to inclusion, human rights, and justice, in which health-related laws, policies, and practices reflect these values and are based on evidence. The program works to advance the health and human rights of marginalized people by building the capacity of civil society leaders and organizations, and by advocating for greater accountability and transparency in health policy and practice.

For more information, see: www.opensocietyfoundations.org.