

EFFORTS TO PAVE THE WAY FOR ENABLING LEGAL ENVIRONMENT, ANTI-DISCRIMINATORY POLICIES AND PRACTICES



Save the Children

BACKGROUND

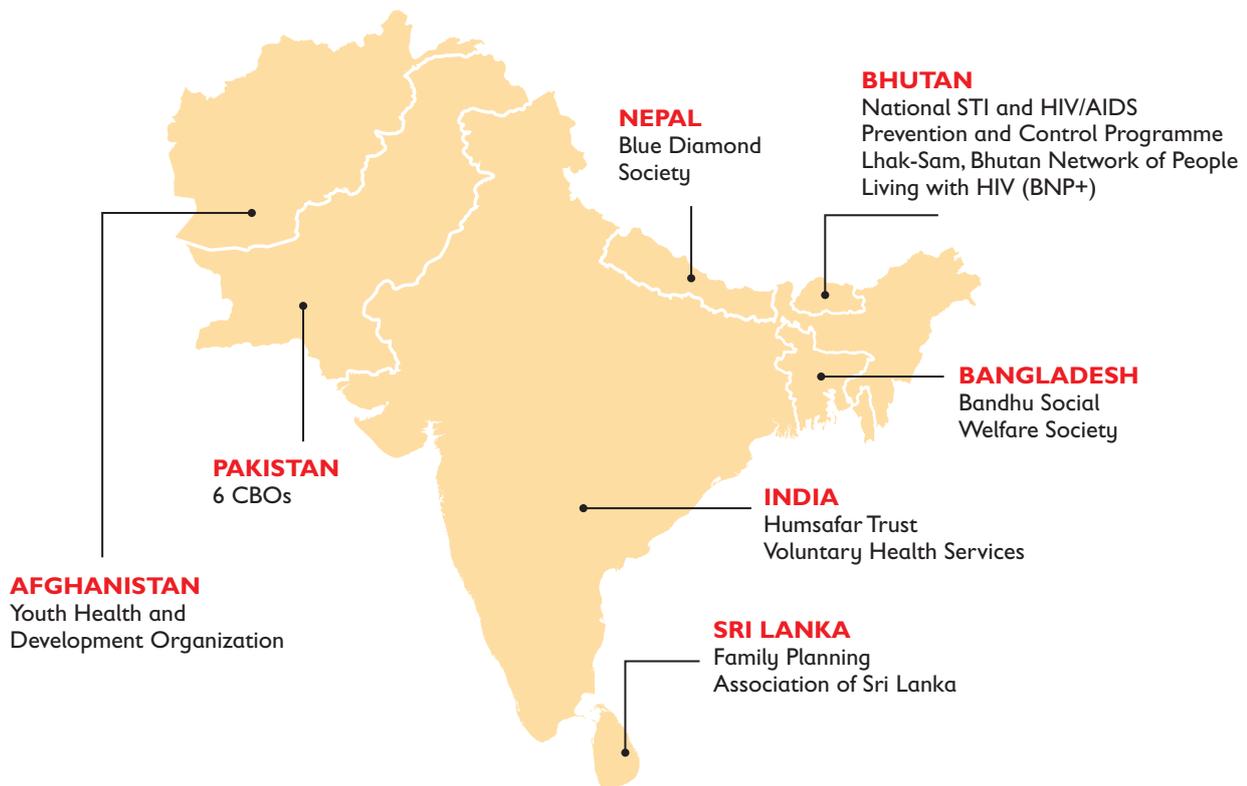
This short document intends to share efforts and results of the Multi Country South Asia HIV (MSA) program in the area of legal and policy reforms focused on human rights and fundamental freedoms of men who have sex with men (MSM) and transgender people (TG). The MSA program is currently led by Save the Children as the Principal Recipient of the grant. This regional program aims at complementing national HIV prevention efforts by addressing critical gaps in reaching MSM and TG communities. It also focuses on community systems strengthening and ensuring more effective linkages between community-led and government-led HIV services. Over the course of 7 years, the MSA program has provided a vital regional platform for advocacy on sensitive human rights issues in a way that supports action to address legal and policy barriers to services for key populations at national and sub-national levels. While progress in enhancing enabling legal and policy environments differs from one country to another, the program was able to significantly contribute to the improved HIV response in the South Asia region by providing a safer space and access to essential HIV services for the MSM and TG communities.

However, discriminatory or punitive laws, policies and practices still exist in the program implementation countries that hinder universal access of key populations to HIV services. There are several transnational issues that need momentum, such as access to HIV drugs, removal of legal barriers to accessing services, child protection and HIV, and the rights of migrants, including access to health [SAARC Regional Strategy on HIV/AIDS, 2013-2017].

Punitive Laws and Legal Barriers in MSA Countries

Countries	Punitive laws and legal barriers
 AFGHANISTAN	Arbitrary Detention, Torture, and Discriminatory Practices: Afghan law criminalizes consensual same-sex sexual conduct.
 BHUTAN	Unnatural sex: Section 213. "A defendant shall be guilty of the offence of unnatural sex, if the defendant engages in sodomy or any other sexual conduct that is against the order of nature." Grading of unnatural sex: Section 214. "The offence of unnatural sex shall be a petty misdemeanor."
 BANGLADESH	Section 377, Penal Code 1860 criminalizes so-called 'unnatural offences'. Laws which enable arbitrary arrest and detention of most at risk populations (MARPS): Section 54, Code of Criminal Procedure, 1898; Section 75,80,86 of the Dhaka Metropolitan Police Ordinance, 1976 ,Vagrants & Shelter less Persons (Rehabilitation) Act, 2011 (Vagrancy Act).
 INDIA	Section 377 of the Indian Penal Code, 1860 (IPC) which criminally penalized private consensual sex between adults of the same sex. 377 Unnatural Offences – "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine".
 PAKISTAN	Sexual Orientation and Gender Identity: Pakistan's penal code criminalizes sexual behavior between men with possible life imprisonment.
 SRI LANKA	Same-sex sexual activity remains illegal in Sri Lanka according to the Sri Lanka Penal Code of 1883 (Chapter 19)

THE MULTI-COUNTRY SOUTH ASIA PROGRAM AT A GLANCE



Established in 2011, the MSA Global Fund HIV Program is a regional HIV program operating in seven countries: Afghanistan, Bangladesh, Bhutan, India, Nepal, Pakistan and Sri Lanka. The goal of the program is to reduce the impact of and vulnerability to HIV among MSM, hijras and transgender people through community systems strengthening. The MSA program promotes and supports capacity building of the country and regional community-based organizations (CBOs) to provide HIV prevention, care and support services.

The program supports CBOs in policy development; advocacy; partnership building with local governments and health departments; research related to MSM and TG issues; and the development of systems to sustain this work. Recognizing that different levels and types of support and technical assistance are required in each country, Save the Children and the Asia Pacific Coalition on Male Sexual Health (APCOM), a regional community network, cooperate to support high-level regional and national-level policy development and advocacy, technical assistance and research. Sub-recipients CBOs are implementing program activities at the national and sub-national level.

The MSA program tailors its advocacy interventions to target policy makers, health services, police and justice services, media and community structures (Figure 1). All seven countries developed advocacy strategies that are based on respective country needs and

implemented with the support of the MSA program. In addition, the program focuses on establishing, strengthening, improving and sustaining systems for CBOs to coordinate with local governments and health care providers; delivering high quality competencies development support; and providing strategic technical assistance towards relevant results.



WHAT PROGRESS HAS BEEN MADE?

Progress has been made on legal environment for MSM and TGs in the South Asia region, but significant barriers remain and are holding back progress on achieving zero new infections and zero AIDS related-deaths. There are examples of laws and policies in the region that promote and protect human rights and enable access to HIV services (see below). There are also laws that protect women and girls from violence and the violation of other rights; prohibit discrimination on the grounds of HIV status or sexual orientation and gender identity; and ensure a rights-based workplace.

Likewise, the HIV laws and policies strengthen access to justice for key populations. In a first for the region, human rights institutions in Bangladesh and Nepal established dedicated positions to address violations against sexual minorities to improve access to justice for community groups and address human rights violations. Five countries in South Asia hosted national HIV and the law dialogues, and Pakistan produced its first national scan of law and policies affecting the HIV epidemic. This process led Sindh Province in Pakistan to pass South Asia's first protective HIV law. As a result of the national dialogues, all countries were able to engage with communities and other national stakeholders to document key opportunities to promote inclusion and to report progress towards national commitments at the Asia-Pacific Intergovernmental Meeting on HIV in 2015. In February 2015, five National Human Rights Institutions from South Asia joined an additional 13 from the Asia-Pacific region to develop a common action plan to promote and protect human rights in relation to sexual orientation and gender identity.

In an effort to reduce stigma in health care settings, the MSA program offers a wide range trainings for health care workers and employs WHO training curricula for this purpose ("The Time Has Come" WHO, 2015). Efforts were made to integrate this training package into national curricula in each program implementation country. Rights-based institutions will report annually on the progress of regional action plan implementation, which was developed jointly with the Asia Pacific Forum of National Human Rights Institutions and 17 human rights commissions, including 5 from South Asia (Afghanistan, Bangladesh, India, Nepal and Sri Lanka).

MAJOR HIGHLIGHTS AND KEY ACHIEVEMENTS IN BUILDING ENABLING LEGAL ENVIRONMENT IN MSA COUNTRIES

Although not all of the MSA countries have enabling legal environments, each has made significant progress toward recognizing the status and needs of MSM and TG people. Afghanistan and Pakistan programming was focused on HIV service delivery as a prelude to starting advocacy efforts at a later time.



BANGLADESH

- The Government of Bangladesh recognized Hijra as third gender on November 2013.
- The National Human Rights Commission drafted anti-discriminatory law and sent to Ministry of Law and Parliamentary Affairs for vetting and has been waiting for its endorsement from the parliament.
- The National Legal Aid Services Organization, a regulatory body of legal aid services, introduced a separate box for "Third Gender" in the legal-aid form.
- The Election Commission introduced Third Box in the national forms to ensure the voting rights as Third Gender in upcoming election.
- Ministry of Women and Children Affairs declared "Joyeeta Award" for Third Gender in 2017 for the contribution in the society as small entrepreneur.
- A separate section on gender diversity issues (section 8.3) is included in National Psychosocial Counseling Policy 2016.
- The National Curriculum and Text Book Board recommended for supplementary reading materials for secondary-level education along with Teacher's Manual.



BHUTAN

- Lhak-Sam, in coordination with policy makers, has been advocating for the amendment of section 213 and 214 of the Bhutan Penal Code (sodomy), since 2012.
- The policy makers and judiciary have recommended amendment/change the section.
- Legal situation on the ground is much calmer compared to some countries in the region. More people of the country understand the meaning of abbreviations like SOGIE (Sexual Orientation and Gender Identity or Expression) and LGBT (Lesbian, Gay, Bisexual and Transgender) heading towards solidarity for change.
- LGBT has been given a human face, which enables LGBT to discuss and express on the social, health and legal issues.



INDIA

- TG Bill introduced by the Member of Parliament (Tiruchy Siva) in 2015. The Private Member Bill passed in the Rajya Sabha (i.e upper house of parliament) on 24th April 2015. It sent to the Lok Sabha (i.e lower house of parliament) on 26th February 2016.
- The government also introduced The Transgender Persons (Protection of Rights) Bill, 2016. Community forums and civil society organizations have provided input on the bills with the help of many stakeholders.
- The government declared April 15th as TG Day in Puducherry and Chhattisgarh.

- TG Welfare Board formed in Bihar, Gujarat and Uttarakhand.
- Inclusion of transgender syllabus in university curriculum in Chhattisgarh and Chandigarh.
- Educational support free of cost in universities in Tamil Nadu, Andhra Pradesh, Chhattisgarh and Puducherry.
- Free legal aid camp offered for TGs in Chandigarh.
- Letter through Director General of Police to all police stations safeguarding TGs in Rajasthan.
- Protection for TGs in employment announced in Karnataka, Gujarat, Chandigarh, Bihar, Puducherry and Uttarakhand.
- Resource allocation for TGs welfare from Government in Kerala.

SRI LANKA

- Gender recognition certificates issued enabling transgender persons to change their documentation.
- The Sri Lankan government delegation made a statement during the Universal Periodic Review of the UN Human Rights Council and said it is committed to ensure non-discrimination on sexual orientation and gender identity.
- The Supreme Court of Sri Lanka, while upholding a conviction on charges of homosexuality, recognized the consensual and private nature of the act and refused to impose the sentence.
- The available drafts of the recommendations for a new Sri Lankan constitution, including the Public Representations Committee report and the Steering Committee reports guarantee the non-discrimination based on sexual orientation and gender identity.
- The National Human Rights Action Plan asks to review

and consider the definition and scope of the right to non-discrimination on any prohibited basis including sex, race, ethnicity, religion, caste, place of origin, gender identity, disability or “another status” and to eliminate discriminatory practices within healthcare settings based on perceived or actual HIV status, sexual orientation and gender.

NEPAL

- In September 2015, Nepal became the first country in Asia and the Pacific to constitutionally recognize and protect MSM and transgender people.
- The Blue Diamond Society in Nepal worked closely with the National Human Rights Commission, political parties, UN agencies, and national stakeholders to create an enabling environment for communities to implement the endorsed bills and policies in favor of LGBT community in Nepal.
- In line with the Supreme Court’s decision of 2007, and a subsequent court order, the government in 2015 began issuing passports in three genders: “male,” “female,” and “other.”
- A few Nepali citizens with “other” passports have successfully travelled abroad with their travel documents recognized by the foreign governments.
- The government has begun allocating funds for enabling the planning and implementation of programs that benefit the LGBT and local district governments are supporting small-scale MSM/LGBT programs.

CONCLUSION

The MSA Program has been the regional platform for addressing the critical gaps in reaching MSM and TG people, thereby complementing national grants and programs. The MSA program created opportunities to exchange learning, advocate, generate evidence, cooperate and network among the MSA countries for establishing the rights and gender equality of the MSM and TG populations in this region. Over the seven years of funding support, the grant was able to develop regional and country specific advocacy strategies for each MSA implementing countries in line with the global focus. As a result of the collective voice and their unified pressure, the national governments were able to include the community representatives and organizations in developing national and regional HIV strategies. The advocacy initiatives need to continue with unified efforts of the UN bodies, civil society, national governments, the private sector and MSM and TG populations to achieve the ultimate goal of the program of reducing the number of new HIV infections in MSM and transgender people and reaching the global commitment of ending AIDS by 2030.



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