



SOGIESC FACT SHEET SERIES

Fact Sheet 3:

Being transgender in Asia Pacific

Introduction

Transgender people exist in all parts of the Asia Pacific region, though they may use culturally specific, traditional, indigenous or local terms to describe their identity. In some parts of the region, there is a long history of celebrating gender diversity, with transgender people given specific roles in spiritual, ceremonial or healing rituals. These roles typically recognise someone assigned male at birth who embodies the spirit of a woman or of both sexes. In all parts of the region, transgender women and/or *hijras*, *warias*, *metis* and other cultural identities remain the most visible within transgender communities.

The term non-binary has been less commonly used in this region by transgender people who identify as not solely male nor female, but is now sometimes used, especially by younger people.

Until relatively recently, transgender men, or those who identify on a trans masculine spectrum, were invisible in this region. However, in many countries in Asia, and in a few countries in the Pacific, the number of transgender men has grown dramatically over the last five to ten years and community groups have been established, particularly online. Yet their overall visibility remains low within both transgender organisations and in the wider community.

Transgender people in Asia Pacific face violence, discrimination, criminalisation of so-called 'cross dressing', limited access to gender affirming health services, and barriers to amending gender markers on official documents. When such legal gender recognition is dependent on medical requirements, this can amount to forced or coerced sterilisation.

Few countries in the Asia Pacific region explicitly prohibit discrimination on the grounds of gender identity or gender expression. This leaves transgender people vulnerable to exclusion, violence and extortion. In those few countries with anti-discrimination laws, NHRIs can usefully clarify how these apply to transgender people.

Human rights issues

1. Violence

All people, including transgender people, have the right to security of the person and to protection by the State against violence. Internationally, including across this region, transgender people face high levels of violence.

In a climate of criminalisation, where law enforcement agencies themselves perpetrate violence with impunity, it is not surprising that violence against transgender people goes unreported or is inadequately investigated. In this region and globally, transgender organisations have attempted to monitor the most extreme forms of violence, when transgender people have been killed because of their gender identity. The vast majority of those murdered are transgender women.

Emerging research in the region and internationally suggests that trans men and non-binary or gender diverse people assigned female at birth face high levels of violence and abuse within the family. This abuse includes corrective rape and forced marriage. It remains invisible and unreported when States do not legislate against family and domestic violence and leave families to enforce social norms, and so-called standards of respectability and morality.

Research in this region has identified conversion practices that attempt to change or suppress transgender people's gender identity or expression, by trying to force them to be cisgender. Such practices are often perpetrated by family members, religious leaders, and health professionals including unregulated traditional healers.

2. Discrimination

1. *Direct discrimination*

Transphobia is the dislike of or prejudice against someone who is, or is assumed to be, transgender. Transphobia fuels discrimination and stigma against transgender people, based on their actual or perceived gender identity or expression.

Direct discrimination against transgender people is very high and often unquestioned. In many communities, it is commonplace for transgender people to be ridiculed. This is reinforced by negative portrayals in the media, derogatory terms used to describe transgender people and inappropriate references made to intimate parts of their bodies. Many of these terms and references dehumanise transgender people and are an invasion of their privacy.

Stereotypes against transgender people typically describe transgender people as 'less than' male or female and segregate them to the margins of society. By doing so, stereotypes can be self-perpetuating as people struggle to imagine a better future than the narrow options made available to them.

A person's gender identity affects all aspects of their life. On any given day, people are referred to repeatedly using a name, title or other term that identifies them as either male or female. If people go to use public toilets or baths, to pray, to cut their hair or to try on clothes in a shop, they are routinely required to choose between female or male facilities. In many parts of the region, security checkpoints in shops, public buildings and airports are frequently sex-segregated. For transgender people, especially those who are very visible, each of those interactions is potentially a place where their gender identity will be questioned and they may face discrimination or violence.

Transgender people are routinely rejected by their families and excluded from participating in their cultural or religious communities. Discrimination impacts severely on their rights to education, work, adequate housing and access to health and other social services. Many live in poverty on the margins of society. As a result, transgender women are much more likely than the general adult population to be living with HIV. In this region, the term social exclusion has been used to describe the cumulative impact of this marginalisation.

School is not safe for many transgender young people. Violence is one of the main factors forcing transgender people out of school or home at a young age, leaving them to look for ways to survive. Even transgender people who complete their schooling frequently struggle to get a job, either because they do not fit gender norms for men and women or their school qualifications, job references or identity documents disclose their gender identity. There are very high rates of unemployment, underemployment and occupational segregation among transgender people. They face barriers at all stages of the employment cycle, from initial education and training, pre-employment discrimination, limited career opportunities and advancement, and inferior employment conditions.

b. Indirect discrimination

Indirect discrimination against transgender people occurs when an apparently neutral policy or practice has the effect of disadvantaging transgender people. It is a common experience for transgender people.

i. Changing name details

Many organisations have a blanket policy that documents, such as academic qualifications or identity documents, will not be reissued if someone changes their name. Often the rationale is that a requirement to do so would be prohibitively expensive because of the number of women who change their name when they marry. These policies have a disproportionate negative impact on transgender people. Transgender people who are unable to update their name on their school or tertiary qualifications are forced to choose between having no academic qualifications and disclosing their gender identity.

ii. School policies and practices

In this region, schools commonly require students to wear distinct school uniforms, including hairstyles, that have different requirements for boys and girls. These policies can indirectly discriminate against transgender students when they are disciplined for wearing a uniform that matches their gender identity or expression. This punishment includes being excluded from school or denied the right to sit exams. Girls-only and boys-only toilets and changing rooms are often particularly unsafe spaces for transgender students. In response, anecdotal evidence includes examples of transgender students self-medicating to prevent themselves from needing to urinate during school hours. These policies and practices create significant barriers for transgender students, with implications for their future educational choices and employment options.

iii. Conscription

Thailand, Singapore and South Korea require all males to be available for military service, including trans women AMAB. This policy can have a disproportionate impact on transgender women's safety and dignity, both during the selection process and if they are selected for military service. While exemption processes exist in each country, concerns have been raised that they are applied in a discretionary way and may undermine transgender people's right to privacy. This is particularly the case when chest examinations are undertaken in public, including for transgender women who have had breast surgery. Exemption categories are typically based on psychiatric diagnoses and have been criticised as stigmatising, with implications for transgender people's future employment record.

3. Criminalisation

In many parts of Asia, public nuisance, vagrancy or related laws have been used to harass transgender women arbitrarily. In some countries, religious police have authority under religious laws to arrest transgender people under similar provisions. Arrests can also be made under state-level Sharia laws that only apply to Muslims.

Transgender women who have sex with men may still be detained and prosecuted under laws criminalising homosexuality, even though they identify as women. In countries where sex work is criminalised, transgender women are frequently targeted under these provisions.

Laws prohibiting so-called cross-dressing still exist in some countries in the Asia Pacific region. Some have provisions against 'female impersonation' and a minority also prohibit 'male impersonation'.

4. Gender recognition

a. Importance of gender recognition

Having the correct name and sex or gender identity on official documents is a basic necessity. It is required for transgender people to be recognised as a person before the law.

Transgender people are vulnerable to human rights violations when their name and sex details on official documents, including identification documents, do not match their gender identity or expression. Violations may occur in these circumstances for a number of reasons, including:

- discrimination and violence when documents disclose that someone is transgender
- denial of services, with transgender people being turned away from both 'women-only or 'men only' facilities
- no access to services appropriate to their gender identity; for example, transgender women being detained in male prisons.

b. Provisions that require medical steps resulting in sterilisation

In some situations, the process for amending details on official documents may lead to subsequent human rights violations. For example, transgender people may be required to undergo gender reassignment surgeries that result in sterilisation.

Sterilisation without full, free and prior informed consent has been described by human rights bodies as an involuntary, coercive and/or forced practice. It violates the right to health, the right to information, the right to privacy, the right to decide on the number and spacing of children, the right to found a family and the right to be free from discrimination.

c. Provisions that discriminate on the grounds of age, marital or family status

Even where court decisions, laws or regulations enable some transgender people to obtain legal gender recognition, these provisions often explicitly exclude other transgender people. For example, some provisions in South Korea and Japan exclude those who are minors, those who are married and those with minor children from amending the sex details on their official identity documents. This means that transgender people who are already married are forced to divorce to gain legal gender recognition.

d. Recognition of third gender options

A number of countries in South Asia, including India, Bangladesh, Nepal, and Pakistan have recognised the specific status of *hijras*, *metis*, *khwaja sira* and other transgender people who identify as a third gender. However, implementation has typically been slow.

In 2014 the Indian Supreme Court upheld the right of transgender people to identify as either male, female, or as a third gender. This was the first acknowledgment of legal gender recognition needs of trans women and trans men in this region. Difficulties persist in fully enacting and implementing this right.

In 2018, Pakistan passed an affirmative federal gender recognition law based on self-identification, making it one of the most progressive provisions in the Asia Pacific region.

5. Access to gender-affirming health services

a. Human rights standards

The right to the highest attainable standard of health requires that health services are available, accessible, acceptable and of quality. However, transgender people worldwide experience substantial health disparities and barriers in accessing appropriate health services.

b. Terminology

The term 'gender-affirming health services' covers the full range of procedures a transgender person may require in order to medically transition.

'Gender-affirming health services' is a broader term that recognises that there are many health interventions that can affirm a transgender person's identity. These include, for example, counselling

and peer support, hormone therapy, hair removal, chest or breast reconstruction surgeries and surgeries to modify other parts of the body, including genitals.

c. Regional situation

In the Asia Pacific region, public health systems or private health insurance cover medical transition costs only in Hong Kong, mainland China, parts of India (particularly for *hijras*, *aravani* and *thirunagai*), to a certain extent in Australia and to a very minimal extent in New Zealand. Most transgender people in the region have to pay to access any counselling, diagnosis assessment, laboratory tests, hormone treatment, hair removal, surgeries and other treatments.

Self-medication of hormones is common among transgender women in the region. This means they have no prior medical advice in relation to monitoring of doses and potential side effects. In the Pacific, there is often no access to specialist advice and the most commonly used hormones are oral contraceptive pills that are not ideal for transgender women. There is no access to hormones for transgender men in the Pacific.

When they are denied access to existing services or when those services are not available, transgender people are at the mercy of unregulated and potentially unqualified practitioners. Transgender women who cannot obtain hormones or afford surgeries may view injections of silicone and other soft tissue fillers as their only accessible form of body modification. These practices are very dangerous and potentially fatal.

Some work by NHRIs on transgender issues

Some examples of the work done by NHRIs in this region on human rights violations against transgender people include:

- In 2006 and 2007, the **New Zealand Human Rights Commission** held a Transgender Inquiry focused on discrimination, legal gender recognition and the right to health. After publishing its report and recommendations in 2008, it ran a national public education programme and facilitated dialogue between transgender communities and government agencies on the Inquiry's key recommendations. This resulted in some significant changes including simple administrative processes for choosing male (M), female (F) or a third (X) option on passports and driver licenses.
- The **Australian Human Rights Commission** has intervened in cases before the courts and, in 2009, investigated and made recommendations about the legal recognition of sex in documents and government records. This led to federal guidelines on the recognition of sex and gender. The Commission has advocated for stronger federal laws that protect people from discrimination on the basis of their SOGIESC status and in 2019 developed guidelines for the inclusion of transgender and gender diverse people in sport.
- In 2013, the **National Human Rights Commission of Bangladesh** (JAMAKON) developed a manual for gender and sexual minorities explaining its work and encouraging people to file complaints if they faced discrimination.
- After the killing of Jennifer Laude, a Filipina transgender woman In October 2014, the **Commission on Human Rights of the Philippines** conducted a human rights investigation to monitor the case, and called on the Government to investigate promptly, hold perpetrators to account. The Commission also called for sensitive handling and reporting of the case that respected Jennifer's dignity and gender identity, and for the Government to establish a system to record and report on cases of violence based on a person's SOGI status.
- In 2015, after receiving a complaint from a transgender person facing administrative difficulties trying to change their gender details on identity documents, the **Human Rights Commission of Sri Lanka** held discussions with civil society groups and met with government officials. The Commission made recommendations, including for legislative change, to the Sri Lankan Government to resolve the complaint and ensure respect for transgender people's rights to identity, non-discrimination and dignity.

- The **Malaysian National Human Rights Commission** (SUHAKAM) published a study in 2019 based on interviews with 100 transgender people in Kuala Lumpur and the state of Selangor. They investigated transgender people's experiences of discrimination, particularly in relation to the rights to education, employment, healthcare, housing and dignity.

Key points

- Transgender men, transgender women and those who identify as another gender, including using culturally specific terms or as non-binary, exist in all parts of the Asia Pacific region.
- Direct and indirect discrimination affects transgender people in all aspects of their private and public lives and leads to social exclusion. This includes systemic bullying of transgender and gender diverse students at school and discrimination at all stages of the employment cycle.
- Transgender women continue to be criminalised under laws that prohibit so-called cross-dressing and are frequently targeted by laws criminalising homosexuality, even though they are not gay men. Public nuisance and vagrancy laws and criminalisation of sex work also disproportionately affect transgender women.
- Transphobic violence is a form of gender-based violence directed against transgender people. The majority of transgender people killed because of their gender identity are transgender women. There is emerging evidence of high levels of sexual and physical violence against transgender men within their families or in intimate relationships.
- When violence or discrimination attempts to change or suppress a transgender person's gender identity or expression, it is a form of conversion practices.
- Legal gender recognition is a fundamental civil and political right that is necessary to realise other rights. Having the correct name and sex or gender identity on official documents enables transgender people to be recognised as a person before the law and to have legal protection.
- Gender-affirming health services are medically necessary for many transgender people and are a component of the right to the highest attainable standard of health.