FEATURE ARTICLES

A Survey of the Living Conditions of Transgender Female Sex Workers in Beijing and Shanghai, China

Emerging Needs for Research on Human Services for Low-Income and At-Risk LGBT Populations

"I Decide Who I Am": The Right to Self-Determination in Legal Gender Recognition

Corrective Rape in South Africa: Cultural Issues and Policy Solutions

School-Based Services for LGBTQ Youth

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LETTER FROM THE EDITOR-IN-CHIEF

Crosby Burns

Onward and upward, our movement continues its myopic focus on the issue of marriage equality—a critical issue toward full equality for LGBTQ people, no doubt, but one that masks the considerable gaps in equality that remain. Even with a favorable Supreme Court ruling, for example, LGBTQ people can get legally married on Sunday but be legally fired from their job on Monday, legally denied housing on Tuesday, and legally forced out of a restaurant on Wednesday.

In this context, our movement continues its myopic focus on the issue of marriage equality—a critical issue toward full equality for LGBTQ people, no doubt, but one that masks the considerable gaps in equality that remain. Even with a favorable Supreme Court ruling, for example, LGBTQ people can get legally married on Sunday but be legally fired from their job on Monday, legally denied housing on Tuesday, and legally forced out of a restaurant on Wednesday.

It’s in this spirit—the spirit of celebrating the progress we’ve made while recognizing the progress that remains—that the LGBTQ Policy Journal presents its 2015 issue.

In these pages, you will find articles that challenge, that inspire, and that question the politics, ideologies, and laws that impact our community. From community policing here at home, to the plight of transgender sex workers in China, the articles in this year’s edition serve as a call to action to move beyond our single-mindedness on marriage equality and instead harness our collective energy toward remedying the numerous challenges that remain.

Through solidarity, compassion, and above all, hard work, I’m confident that in the next five years we’ll have made similar leaps and bounds as we have in the previous five.

Onward and upward,

Crosby Burns
Editor-in-Chief
Cambridge, MA
Emerging Needs for Research on Human Services for Low-Income and At-Risk LGBT Populations

By Tyler Hatch, Andrew Burwick, Gary Gates, Scott Baumgartner, and Daniel Friend

ABSTRACT

Substantial research gaps impede the ability of policy makers and federal staff to identify human service policies and programs that may address the particular needs of low-income and at-risk LGBT populations. This article summarizes an assessment of the research base regarding human service needs of LGBT populations and presents recommendations for future research within three human service areas: low-income LGBT individuals and families, LGBT individuals’ interaction with the child welfare system, and LGBT runaway and homeless youth populations.

The US Department of Health and Human Services (HHS) is tasked with protecting the health of all Americans as well as providing essential human services, particularly for those least able to help themselves.1 HHS has continued to introduce new initiatives and efforts toward protecting the rights of every American to access quality care, while recognizing that diverse populations have distinctive needs.2

The Obama administration has been a strong advocate for evidence-based social policy.3 Through declarations and directives that call for the use of empirical evaluation to better understand the impacts, limitations, and potential shortcomings of government programs and initiatives, the administration has challenged federal agencies, academic organizations, and other service administrators to better understand the populations that they serve.

Although the administration has attempted to use data to drive decision making, there is limited data on LGBT disadvantaged populations. This project reviewed existing research and literature in an effort to provide guidance for researchers moving forward to better understand the risks and disparities that LGBT populations may face.

Policy makers and researchers need to address a variety of unique challenges that exist when attempting to collect data that could provide important context for understanding the human service needs of LGBT populations. Included among these challenges are issues concerning the willingness of respondents to answer questions pertaining to sexual orientation or gender identity, whether due to language or cultural differences on the constructs of identity and orientation, fear of being identified or outsed as LGBT, and so on. Additional challenges include the...
relatively small number of human service–related popula-
tion-based or administrative surveys that seek to capture
this information.

LGBT Populations and Low-Income Support Programs

Risk of Poverty/Economic Insecurity

Emerging scholarship indicates that some LGBT popula-
tions are at greater risk of experiencing economic insecurity than their non-LGBT counterparts. A variety of federal, state, and local programs exist that seek to provide economic security, job training, and financial assistance to individuals facing economic hardship. These programs are of particular importance because LGBT people may face discrimination in employment, housing, or other services depending on the jurisdiction in which they live and therefore find themselves more vulnerable than their non-LGBT peers.1

Additional analysis indicates that poverty rates are similarly varied among LGBT individuals and hetero-
ssexual individuals. Andrew Burwick et al. conducted original analyses of the 2006–2010 National Survey of Fam-
yly Growth, and found that bisexual-identified adults had significantly higher poverty rates than heterosexual adults (the analysis did not control for other demographic characteristics).2

Data indicates that LGBT-identified adults are 1.7 times more likely to report being unable to afford shelter, health care, or money for food in the past year when compared to non-LGBT adults.3,4

In order to better understand how poverty and econ-
omic insecurity impact LGBT populations and vary among LGBT subpopulations, additional research should be conducted. Potential topics include:

• To what extent does poverty exist among LGBT pop-
ulations, and what individual factors affect poverty
risk? To what extent do poverty rates differ among
subpopulations?

• To what extent do legal protections affect the econ-
omic circumstances of LGBT individuals?

Poverty and Risk Factors Within the LGBT Community

As illustrated before, nationally representative popula-
tion-based data sources that seek respondents’ sexual
orientation or gender identity are limited. Current anal-
yses of population-based data sources indicate differences in poverty rates among same-sex and different-sex
pairs, and between subpopulations within the LGBT community.5 Burwick et al. and Badgett et al. suggest
that the inclusion of questions on sexual orientation and
gender identity in key population-based surveys that are
representative at the national and/or state level would allow
researchers to explore this issue more fully.

In addition to the inclusion of additional questions to
population-based data sources, Burwick et al. sug-
gest that little is known regarding how factors such as
migration, discrimination, education, personal relationships, social
isolation, employment, and health disparities impact
poverty risk among LGBT populations.6 By conducting
studies on existing data such as that from the National
Health Interview Survey, which has included questions on
sexual orientation since 2013, researchers could perhaps
better understand the factors that contribute to differing
poverty rates and economic vulnerability between LGBT
and non-LGBT populations.

Legal Protections Against Economic Insecurity

Though an increasing number of states enact legislation
that have enacted to protect LGBT individuals in the areas of
housing discrimination, workplace protections for sexual
orientation (and less commonly, gender identity and
expression), and legal recognition of same-sex marriage,
little research has been conducted to the extent to
which these protections decrease the likelihood of
LGBT populations from experiencing economic insecur-
ity.7 Recent literature suggests, however, a strong bias against transgender applicants and
employees.8

Burwick et al. suggest that the development of a national
survey of LGBT individuals focusing on workplace experi-
ences could provide the necessary details required to better understand the association between workplace protections for sexual orientation and gender identity and economic
vulnerability.9 Particular focus on LGBT subpopulations,
including analyses on age cohorts, racial or ethnic minori-
ties, and specific sexual orientations or gender identities
would provide a level of nuance not currently known
within the field.

Participation in Services for Low-Income People

Utilizing varied data sets including the 2010 American
Community Survey and the 2006–2010 National Survey
of Family Growth, Badgett et al. detail that same-sex
male and same-sex female respondents receiving higher
twice of government support at statistically significant
levels than their different-sex couple counterparts.10 To
better understand the participation of LGBT populations in
low-income support self-sufficiency programs, several
research areas could be explored. Some topics include:

• Do unique barriers exist for LGBT individuals
attempts to access income support services?

Barriers to Accessing Income Support Services for LGBT
Individuals

Additional research could provide important infor-
mation regarding experiences of LGBT individuals who
seek income support services. There is a substantial need
for information about whether eligible LGBT people receive
benefits. Data to support these analyses is currently
not available. Quantitative studies that rely on popula-
tion-based data sources could, with proper sample sizes,
allow researchers to examine how rates vary between LGBT
subpopulations including analyses on age cohorts, race and
ethnicity, and other potential cohort classifications.11

Administrative data providing important insight into
the implementation of programs is increasingly viewed as
a valuable source of relatively low-cost data.12 Exploring
the feasibility of adding items on LGBT identification to
administrative databases is another avenue that researchers
and practitioners could explore.

Conducting interviews with staff of public and pri-
ivate organizations that provide services to low-income
LGBT populations could help identify potential barriers
associated with collecting sensitive client information
including individuals’ sexual orientation and gender iden-
tity. Additionally, conducting focus groups and interviews
with LGBT people who participate in low-income support
programs (for the focus of this article particularly, the
Temporary Assistance for Needy Families program and
child support services) could yield valuable insights into the
cultural competency of case managers, perceptions regard-
ing potential systematic or imposed barriers of delivery
and individuals’ experiences with the application process.

Are Employment Assistance Programs Successfully Serving
LGBT Individuals?

Targeted outreach to minority populations is a technique
often used by federal and state agencies including HHS.13
Some employment programs target low-income LGBT
individuals in an attempt to improve employment outcomes
for this population. For example, the Los Angeles LGBT
Center’s Transgender Economic Empowerment Program
(TEEP) targets transgender job seekers as well as the
employers who are prepared to interview, hire, and work
with these employees.14 Additional review of programs
that target LGBT populations could include interviews of
program staff and focus groups with participants, and review
of program materials. This review could help indicate suc-
cessful practices and methods that other programs could
model, emulate, and adapt to their unique needs.

LGBT Populations and the Child Welfare System

LGBT Youth’s Interactions with the Child Welfare System

Following increased evidence and expert testimony that
LGBT youth in foster care may face particular challenges
and possess distinct needs, the Children’s Bureau, an
agency within Health and Human Services that adminis-
ters federal programming and policy related to the child
welfare system, issued an information memorandum
encouraging providers to support LGBT youth in foster
care.15 The memo reiterated that all children, irrespective
of the young person’s sexual orientation, gender identity,
or other discernable characteristics, are entitled to a safe, affirming, and
loving foster care placement.16

Though no data is available to determine the number of
LGBT youth in foster care at the national or state level,
existing research in local areas indicates that LGBT youth
may be overrepresented in the child welfare system.17

Existing research also indicates that LGBT youth
in foster care may experience less permanency within
placements than non-LGBT youth.18 Research also sug-
gests that young people who are LGBT, or whose gender
expression is at odds with societal norms, are more likely to
face maltreatment by caretakers than their non-LGBT
peers.19

To better understand the experiences and participation
of LGBT youths’ experiences in the child welfare system,
several research areas could be explored. Questions for
future research to address include:

• Do rates of child maltreatment experienced by LGBT
youths in the child welfare system differ from rates
of race, ethnicity, gender identity, or other discernable
characteristics? What family and community characteristics
are associated with elevated levels of child maltreatment
among LGBT people? In particular, are risks for
racial/ethnic minorities and transgender youth unique from
their nonracial/nonethnic minority or cisgender
LGBT peers?

• What proportion of youth in foster care do LGBT
youth comprise? What are the characteristics and
demographics of LGBT youth in foster care, and how
do these traits compare to their non-LGBT coun-
terparts within the same system? What perceptions
do LGBT youth in foster care have regarding safety,
supportiveness, and appropriateness of services and
placements?

• To what extent are public child welfare agencies taking
measures to improve services for LGBT youth within
the foster care system? What challenges and successes
are these agencies experiencing when changes to better
serve this population are implemented?

Maltreatment Among LGBT Youth in the Child Welfare System

Representative school-based longitudinal and retrospec-
tive studies with purposive samples have been engaged
by researchers to better understand the rate of maltreatment
that LGBT youth face. Additional analyses of sources such
as the Youth Risk Behavioral Survey (a periodic popula-
tion-based survey of students administered on the state and local level) and the Longitudinal Studies of Child Abuse and Neglect (a consortium of research studies initiated in 1991 through a grant from the National Center on Child Abuse and Neglect) could yield important nuances regard-
ing how individual factors such as age, race/ethnicity, or other self-reported characteristics influence rates of maltreatment. Family structure and community values can greatly influence and shape the experiences that minority popula-
tions have. Conducting a longitudinal or one-time survey including retrospective reports of child maltreatment could allow researchers to examine the influence that family and community structures have on risk of child maltreatment among LGBT youth.

LGBT Youth in Foster Care

Through the Permanency Innovations Initiative (PII), the Administration for Children and Families created and tested potential models to survey LGBT youth in foster care. This project, entitled the Los Angeles Foster Youth Survey, could serve as a model for researchers to implement within other localities. Additional surveys through multiple jurisdictions could employ survey instruments and could provide guidance to researchers and child welfare agencies about best practices to improve respondent confidentiality, to secure informed consent from minors, to identify methods and questions about soliciting answers regarding sexual orientation and gender identity from respondents, and so on.

There are several methods of placement within the child welfare system with options ranging from adoption, family reunification, permanent relative care, or other arrange-
ments. Research that seeks to understand placement history and outcomes of LGBT participants could inform administrators and providers of areas that need particular attention. A longitudinal study of youth in foster care that included measures of sexual orientation and gender identity or a retrospective survey of youth who have exited the foster care system could identify whether LGBT youth have disparate permanent outcomes across various states and localities.

Recommendations for improving the administration of services to LGBT youth in the foster care system have been implemented in some local areas. Specific measures include introducing sensitivity training for all program staff and prospective foster or adoptive parents, implementing anti-harassment policies, and other recognitions.

LGBT Adults’ Interaction with the Child Welfare System

Legal and social biases and discrimination may prevents some LGBT adults from becoming adoptive or foster parents. No data is available to determine the number of LGBT adults that are actively seeking to become foster or adoptive parents, though existing information suggests that LG same-sex couples are more likely than their hetero-
sexual counterparts to be adoptive parents.

LGBT Prospective Adoptive and Foster Parents

Little is known regarding the experiences of LGBT adults with public child welfare agencies and how these experiences vary by agency location and LGBT subpopu-
lution (such as transgender adults). Qualitative studies that involve interviews and focus groups could yield informa-
tion on how specific processes of the foster and adoption placement process (such as the home study) are viewed by LGBT adults and could provide information on any perceived barriers or issues that they face within the pro-
cesses. Surveys of public child welfare agencies could assist researchers in identifying demographics and characteristics of LGBT foster and adoptive parents.

LGBT Youth and Services to Support Them

The Administration for Children and Families oversees many services for vulnerable youth populations. While these services encompass many areas, this section will discuss programs funded through the Family and Youth Services Bureau (FYSB) that serve runaway and homeless youth populations. The Runaway and Homeless Youth Information System (RHYIS) provides real-time data and information on LGBT youth experiencing homelessness. FYSB has taken steps to make the RHY Program access-
able to LGBT youth through a variety of mechanisms, such as requiring federal grant recipients to sign forms that require inclusion and nondiscrimination standards and anti-harassment policies within their centers, and an expectation that grantees will ask participants questions surrounding their sexual orientation.

Existing research indicates that LGBT youth may be overrepresented among the homeless youth population. Estimates from local area surveys indicate that LGBT youth comprise 6 percent to 35 percent of the youth homeless population. Research that employed popula-
tion-based data from Massachusetts found that students who identified as LGB or questioning, or who identified as heterosexual but reported same-sex sexual activity, were four to thirteen times more likely to be homeless after controlling for age, race/ethnicity, and a variety of factors that could impact the quality and effectiveness of services for LGBT youth.

Perceived Barriers to Services for LGBT Youth

Focus groups and interviews with LGBT youth and prospective foster and adoptive parents identified as LGBT or questioning, or who identified as heterosexual but reported same-sex sexual activity, were four to thirteen times more likely to be homeless after controlling for age, race/ethnicity, and a variety of factors that could impact the quality and effectiveness of services for LGBT youth.

information on LGBT youths’ participation in homeless-
ness services is extremely limited as well as any information on potential barriers to accessing services. To better under-
stand the experiences of LGBT homeless youth several research areas could be explored. The topics include:

- What proportion of homeless youth identify as LGBT?

Homeless Youth Identifying as LGBT

Surveys conducted on the local level of homeless youth should adopt promising practices for gathering sensitive information involving sexual orientation and gender identity, such as those identified by YouthCount! (an interagency initiative to develop promising strategies for counting unaccompanied homeless youth up to twenty-four years old). This information may provide additional opportunity for analyses to better understand demographics of this group and opportunity to more precisely estimate the proportion of homeless youth that identify as LGBT.

Characteristics and Needs of LGBT Homeless Youth Compared to Those of Non-LGBT Homeless Youth

Local and national surveys that employ purposeful sampling methods to generate large samples of homeless youth could gather details on the experiences of both LGBT and non-LGBT homeless youth. Analysis of characteristics such as risk behaviors, housing instability, human trafficking and exploitation, physical and mental health, and other topics could provide practitioners with points of comparison for LGBT and non-LGBT homeless youth. Such information could aid policy makers and ser-
vice providers with important information about services addressing sexual orientation and gender identity, such as those identified by YouthCount! (an interagency initiative to develop promising strategies for counting unaccompanied homeless youth up to twenty-four years old). This information may provide additional opportunity for analyses to better understand demographics of this group and opportunity to more precisely estimate the proportion of homeless youth that identify as LGBT.

Factors That May Increase or Reduce LGBT Youth Homelessness

More research is needed to better understand the mech-
anisms of homelessness. Additional research should be conducted to examine what individual, family, and commu-

nity level factors affect the likelihood that LGBT youth may become homeless. This research should additionally examine risk factors for homelessness among subpopula-
tions of the LGBT youth homeless community.

Research Themes

Five broad themes exist in research needed related to understanding the human service needs of low-income and at-risk LGBT populations that could drastically expand the potential for research in the human service needs of LGBT populations if they were to be adopted and implemented by federal, state, and local agencies. These general themes include:

1. Develop additional sources of administrative and survey data to better capture the number of LGBT people who experience economic hardship and the degree to which they participate in human service programs.

2. Explore in greater detail the variance of economic outcomes and potential reasons for health disparities between subpopulations of the LGBT community with specific emphasis on transgender youth and young LGBT people.

3. Understand potential barriers to service access and the extent to which barriers vary across location, agen-
cies, services, and subpopulations within the LGBT community.

4. Identify and document approaches and practices to tailor human services to LGBT populations, particularly how extensively agencies have adopted recommended practices and their experiences imple-
menting them.

5. Evaluate the effectiveness of human service interven-
tion models that specifically target potential LGBT participants. Though several programs have conducted such outreach, research is needed to evaluate whether these targeted interventions and possible successful in engaging LGBT participants than programs without the tailored outreach.

These five general research recommendations provide a framework for researchers, policy makers, and practitioners to explore potential areas of interest involving LGBT individu-
als’ interactions with human services. These research themes would provide important statistical and adminis-
trative data that could serve as the basis for new policies, practices, and approaches to serving low income and at-risk LGBT populations.
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Andrew burwick is a senior researcher at Mathematica Policy Research. His research focuses on the implementation, quality, and costs of human services. In addition to directing the assessment of the knowledge base and research needs related to low-income and at-risk LGBT populations, he has led studies of employment assistance programs, early childhood education programs, services for runaway and homeless youth, and interventions for families at risk of child welfare involvement. Burwick earned a master’s degree in public policy from Georgetown University, with a focus on social policy.

Daniel frieNd is a survey researcher at Mathematica Policy Research, where he has served in various roles on research projects related to runaway and homeless youth, teen pregnancy and sexually transmitted disease prevention programs, and healthy marriage and responsible fatherhood programs. He received his master’s degree from the University of Oregon in clinical psychology, specializing in family violence. Prior to joining Mathematica, Friend was the project director at the Relationship Research Institute managing an ACF-funded randomized clinical trial of a psychoeducational workshop aimed at the prevention and treatment of intimate partner violence among low-income couples. His work at the Institute also included clinical experience with LGBT couples.

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Introduction

Transgender female sex workers in China face a wide spectrum of discrimination in society and government policies, preventing this highly marginalized group from accessing a range of services and legal protections. Transgender female sex workers often experience amplified stigma due to both their gender identity and their profession. When seeking public services, and particularly health care, they experience isolation and often humiliation, leading many transgender women to self-medicate and engage in dangerous transition practices, such as self-administered hormone therapy. Fear of exposure causes this diverse group of women to live increasingly hidden lives, away from family, employers, and community members who may subject them to verbal abuse or punitive action such as tenant eviction, job dismissal, or police abuse. Restrictive legal frameworks compound this discrimination by effectively denying many transgender women the right to a legal identity and/or personal autonomy.

Within this environment, evidence indicates that transgender women and transgender female sex workers are among the populations most heavily affected by, and at risk of contracting, HIV. Globally, transgender women are forty-nine times more likely to acquire HIV than other adults of reproductive age, and the rate of HIV infection among transgender female sex workers is 27.3 percent, or nine times, higher than the rate among female sex workers. Despite this data, very little is known about this population, and data collection and/or programming targeted for transgender sex workers is almost nonexistent.

Between January and September 2014, Asia Catalyst and two community-based organizations (CBOs) in China—Beijing Zuoyou Information Center and Shanghai Commercial Sex Worker (CSW) & Men Who Have Sex with Men (MSM) Center—interviewed seventy female-presenting sex workers, half in Beijing and half in Shanghai. All of the interviewees were assigned male at birth, but thirty identified as women during the time of the interview, twenty-four identified as male, and sixteen identified as a third gender. Regardless of gender identity, all interviewees presented as female when engaging in sex work. Supplemented by interviews with other CBOs providing services to transgender communities across China, as well as extensive legal and policy research, the findings indicate that transgender female sex workers are among the most marginalized and vulnerable populations in China today.

Legal Frameworks

Although Chinese law permits transgender people to change their gender marker on official documents, the individual must have already completed sex reassignment surgery (SRS), as well as meet other requirements. Transgender people who do not wish to undergo SRS or cannot afford it are left with identity documents that do not match their lived gender, resulting in frequent public
several practical implementation issues. Scholars in China gender marker on household registration (hukou) and identity documents. Part of the process includes provision of a gender authentication certificate issued by a tier-three hospital, a certified copy of the identity document being registered, a personal statement from the Public Security Office of the Ministry of Justice, and/or a certificate from a judicial department agreeing to the gender marker change on the document.  

Some provinces have additional requirements. In Guangdong Province, for example, in addition to the PSB’s requirements, the provincial authorities also require a certificate showing that the human resources department of the individual’s workplace, organization, school, enterprise, or other work unit has approved the transition. This necessitates that the person must notify his or her place of employment and obtain the employer’s consent and approval before being authorized to legally change the gender marker on identity documents. Although at the provincial level there are policies for changing the gender marker on hukou and identity cards, there are no unified regulations for doing the same on school rolls or academic records. If a student decides to change the gender marker on academic records after graduation, it is almost impossible to do this retroactively. The Ministry of Education develops sex discrimination issues at academic institutions, but currently there are no policies regarding how to change gender on education certificates, which impacts an individual’s ability to acquire employment or other pursuits that require educational documentation.

Marital Rights

Currently, Chinese law does not contain any explicit provisions regarding the ability of transgender people to marry.3 However, China has not legalized same-sex marriage and defines marriage as a union between a man and a woman, thereby requiring transgender individuals to conform to legal stipulations in order to register for marriage. This includes completing SRS and altering the gender marker on both the hukou and identity card.11 In practice, there are instances of transgender individuals marrying in China. In 2008, a Sichuan native named Zhang Lin married her boyfriend, Yang Qicheng, thereby requiring transgender individuals to conform to legal stipulations in order to register for marriage. This includes completing SRS and altering the gender marker on both the hukou and identity card.11

During the course of this research, many individuals in the transgender community described a broad spectrum of abuse, discrimination, and a general reluctance to engage in public life. For transgender women who have not completed SRS but who identify and live as women, the gender and photo on their identity cards is male, causing significant obstacles in their daily lives. Among the seventy interviewees, only two had undergone SRS, but thirty had breast implants. All reported humiliating experiences when seeking medical services such as a gynecologist, obtaining a prescription from the Public Security Office, seeking counsel from a doctor, renting an apartment, boarding flights, or staying in a hotel. Interviewees noted they typically went out only at night to avoid being seen by neighbors.21 Yanyan told us that on three different occasions a landlord was ready to sign a lease with her, but then refused after seeing her gender is male on her identity card.21 Other interviewees asked friends to help them get an apartment or rented through an agent in order to avoid trouble.20 Another interviewee, Haima, was evicted by her landlord after neighbors discovered she is transgender and complained. Interviewees also reported discrimination and difficulty concentrating in school, where biased and weak sexual education emphasizes abstinence and premarital chastity, rather than sexual diversity or sexual health. Xiaomei reported that her struggles with understanding her gender identity, compounded by criticism and ridicule from classmates and staff, caused her to leave high school early, which then limited her education and, as a result, job opportunities.24 For WS who experience discrimination at school, this extends to the workplace. She was forced to change her job many times because of discrimination from employers and eventually entered the sex trade industry.21 Globally, discrimination in the workplace is a major factor driving transgender women from low-income backgrounds into sex work. Evidence suggests that due to social exclusion of transgender women, availability, and difficulty in finding employment, a significant proportion of young transgender women engage in selling sex.22 Engagement in Sex Work All of the seventy interviewees engaged in some sort of sex work and presented as female while doing so. All were independent sex workers, but a boss or “market facilitator”Seven also performed in bars or clubs. Of the seventy interviewees, fifty-three (76 percent) stated they were not registered in sex work, and seventy-seven (87 percent) stated that they did not provide services to MSM. After changing to female-preferred sex work, the client base changed; the vast majority of clients are now heterosexual men. All of the interviewees believe that their clients think they are engaging a female sex worker.

For this reason, concealing transgender identity when working as a sex worker was very important for most. Interviewees shared experiences of clients becoming abusive or refusing to pay upon realizing that the sex worker was transgender.20 or

and in some instances, clients even robbed the transgender sex worker.22 Because sex work is illegal, these types of incidents are rarely reported to the police out of fear of arrest. Sex work is against the law in China, law enforce- ment agencies are one of the greatest challenges that transgender sex workers face. Entrance or “fishing” is a necessity to make money in the sex trade industry, while verbal and physical violence and/or extortion is not uncommon. While this is also true for male and female sex workers, the transgen- der female sex workers interviewed spoke of abuse directed at their gender identity. Xiao Qiang said a police officer sat on her back and crushed her breasts.23 Xiao Tong described being taken to a police station. “Once you went in, you pulled on your wig, really hard, and hit you.” They asked me if I was a man, and I said I wasn’t. Then they carried out a body search and flipped my bra up and grabbed me. They asked really pretrained questions, like, how do you have sex? I turned around and asked, do you want to try? Then he kicked me—really, really kicked me.”23

Transgender sex workers who identify as male are usually taken outside with men, where they are also routinely subjected to abuse and insults.25

Health: Sex Work and HIV

By 2020, transgender individuals and MSM will most likely constitute the majority of all new HIV infections in the Asia-Pacific region.26 Despite this prediction, transgender specific data collection, HIV programming, and outreach activities are nonexistent, and most services for transgender populations are only included as part of MSM programming. This is not only fundamentally at odds with the gender identity of transgender women, but also lacks the attention and resources for the unique HIV-related needs of transgender people. It has also prevented the development of effective public health interventions for this population. Sex workers and their clients are at heightened risk of HIV, in large measure because the risk of unsafe sexual encounters increases due to a high number of sex partners.28 While many sex workers interviewed for this report were aware of the importance of using condoms, they did not always use them during sex work.

Research has shown that the power asymmetry between after sex work, and may have even led to gender identity use negotiation.25 Globally, where sex work is illegal and sex workers face barriers to negotiating consistent condom use, vulnerability to HIV and other sexually transmitted infection (STI) increases.26 Interviewees reported the decision to use condoms often rests with the client.26 In places like Beijing, where regular crackdowns on sex work are still carried out, some economic circumstances mean sex workers may also consider the use of condoms in order to keep clients.26

VOLUME V // 13

LGBTQ POLICY JOURNAL
Use of Stimulants and Drugs

By the end of 2012, the number of government regist-
erized synthetic drug users in China was 798,000, a 35.9 percent increase from 2011.33 Sex workers in China are a niche group of drug users, and surveys show that male sex workers are more likely to use drugs than the average MSM.34

During the course of this research, findings highlighted that stimulants were the most commonly used type of drug among the interviewees. For sex workers engaging in anal sex, using “Rush” (Alkyl Nitrite) reduces discomfort and can also enhance pleasure during sexual intercourse. Clients would also occasionally request the use of Rush.35 Although Rush is not linked to chemical addiction, it can bring about psychological dependency and presents a number of physical risks.36

Interviewees also mentioned “Foxy Methoxy.” The main ingredient of Foxy Methoxy is a mind-altering substance called 5-Methoxy-diisopropyltryptamine (5-MeO-DIPT).37 This substance is classified as an illegal drug in many countries. Apart from its hallucinogenic qualities, it can cause serious consequences, including renal failure and death.38 There have been cases of fatal overdose in Taiwan,39 and 5-MeO-DIPT is now a Class Four Controlled Substance there.40 However, there are no controls on 5-MeO-DIPT in China at this time,41 and MSM.34 sex workers are more likely to use drugs than the average problem.42 The use of stimulants and drugs can also lead to problems such as liver damage, glucose or lipid metabolic imbalances, or heart disease.52 Hormones used for contraceptive purposes are often prescribed, and the wrong dosage can lead to erectile dysfunction, making condom use a problem.53 The use of stimulants and drugs can also lead to unprotected sex and thus increase the risk of HIV and STI transmission.54

Gender Affirming Health Services

Transgender people have unique health needs, including gender-affirming health services for diagnosis, hormone treatment, and SRS. However, across the board, general health service providers commonly underserve transgender people or fail to meet their needs.55 Transgender women may choose to use hormones to bring about physiological changes. For individuals with gender dysphoria, many doctors also see hormone replacement therapy as an essential treatment method.56 Of the women interviewed for this research, 26 (37 percent) had experience with hormone use.

Throughout China there are fewer than ten medical establishments that can provide specialized instructions on hormone use for transgender people.57 Public hospitals lack professional knowledge regarding SRS and are unable to provide professional transition advice to transgender people. Furthermore, our interviewees said they are often met with discriminatory attitudes at public hospitals.

Due to the relative low cost and easy accessibility of contraceptives, many interviewees purchased contracep-
tives at pharmacies to be used for hormone replacement medication. Only a small minority had consulted a doctor while taking medication, and most interviewees obtained information from friends. Lacking the advice and oversight of medical professionals, many interviewees suffered side effects due to misuse from nonprescribed dosages. Some were compelled to stop taking hormones because the side effects were too severe. Wang Liting took soy isoflavones and contraceptives. She reported, “Aiya, I felt like I was going crazy! I had heart palpitations, dizzy spells, blurred vision, nausea, and fatigue.”58

Without access to appropriate medical supervision, transgender women may take hormones incorrectly—for example, using the wrong kind of medicine or taking the wrong dosage.59 Furthermore, taking hormones without adequate general health monitoring can result in health problems such as liver damage, glucose or lipid metabolic imbalances, or heart disease.52 Hormones used for transitioning can also result in erectile dysfunction and interfere with correct condom use.60 As a consequence, an individual once taking a penetrative role may now take the (more risky) receptive role. Although information is scarce, studies have concluded that transgender women are, in any case, more likely to take a receptive sexual role, as well as delegate decision making to the client about whether or not to use protection during sex.61

Conclusions and Recommendations

In China, transgender people are not criminalized under the law, but the absence of nondiscrimination laws, professional medical services for gender-affirming health services, and targeted HIV programming and services means they are left without effective protection.

Not only does China lack a legal and policy framework to address these issues, but an ultra-conservative and potentially damaging philosophy of “not encouraging, not discouraging, and not promoting” compounds the situation for transgender people.62 China has also paid little attention to transgender people in its HIV-prevention work, and the 12th Five Year Action Plan for China’s HIV/AIDS Control, Prevention, and Treatment strategy does not include programming for the transgender community.

The research for this report illuminates that the female-presenting sex worker community is very complex and includes women, MSM, and transgender women. Their vulnerabilities to HIV and varied health needs must be carefully assessed, strategically targeted, and addressed. As China is in the process of drafting a new HIV/AIDS action plan for 2016-2020, now is a good opportunity to develop specific strategies for HIV prevention and care for the transgender community.

In many respects, transgender female sex workers face similar challenges to other sex workers. However, these challenges are often magnified by the double stigma and discrimination associated with sex work and transgender identity. In places where sex work is criminalized, sex workers are at significant risk of experiencing violence, often as a result of punitive law enforcement practices.
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**ENDNOTES**

4. Interview with Yanyan, Shanghai, 24 June 2014.
6. Hospitals in China are organized according to a three-tier system that recognizes a hospital’s ability to provide medical care, medical education, and conduct medical research. Based on this, hospitals are designated as first, second, or third tier, with tier-three providing the highest standard of care.
11. Ibid.
15. Interview with Yanyan, Shanghai (16 June 2014).
16. Ibid.; interview with Xiao Shao, Beijing, 20 April 2014; interview with Feifei, Beijing, 20 April 2014; interview with Tian Yuyao, Beijing, 12 April 2014; interview with Mingming, Shanghai, 25 April 2014.
17. Interview with Haiama, Beijing, 21 March 2014.
18. Interview with Xiaomei, Shanghai, 4 June 2014.
22. Interview with Xiao Jiao, Beijing, 1 June 2014.
23. Interview with Xiao Huli, Shanghai, 27 May 2014.

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ABSTRACT

Europe's unique political arena has enabled the deliberation, negotiation, and installation of human and LGBT rights at the transnational level. While these rights lay a theoretical framework by which to promote integration through "European values," however, LGBT rights standards are not uniformly upheld or enforced across the European Union (EU). A lack of consensus toward LGBT rights among EU member states is apparent in Brussels' fluctuating demands for adherence to LGBT rights, both from EU member states and in negotiations with external partners. With a focus on Europe's former Eastern Bloc, this article examines the EU's inability to enforce adherence to LGBT rights in Eastern Europe, a member state since 2004, and the subsequent lack of consistent demand for LGBT rights in Brussels' negotiations with external states such as Serbia and Ukraine. Variation in demands for LGBT rights indicate that LGBT rights are considered by Brussels as a political bargaining chip rather than a fundamental human right, which consequently undermines the EU's own ideology of integration through adherence to human rights.

On 9 October 2014, the Estonian Parliament passed the Civil Partnership Act by a vote of 40 to 38, becoming the first former-Soviet state to legally recognize relationships between two people of the same sex. When introducing the bill to parliament, Estonian President Toomas Hendrik Ilves declared his support for gender-neutral civil partnerships, saying, "Estonia must be a tolerant and liberal country in which there is respect for basic rights and the equality of all before the law." Drawing on an established European-level discourse on human rights—rooted in a liberal, humanist framework of intrinsic individual rights—President Ilves was able to incorporate nondiscrimination standards into domestic legislation and advance domestic LGBT legal protections.

Europe's unique transnational political arena has enabled the deliberation, installation, and negotiation of human rights—and therefore LGBT rights—to serve as an element in the promotion of European integration. Historic attempts by the European Union (EU) to solidify a cohesive "European identity" have employed human rights as a binding framework that champions common goals of individual freedom and autonomy. Indeed, after the collapse of Cold War-era political and economic structures in Europe's former Eastern Bloc, the European Union has used human and LGBT rights standards set by EU treaties as a precondition to EU membership. Prior to membership in 2007, for example, Romania decriminalized "public manifestations of homosexuality" under pressure from the European Council. Indeed, since 2004, eleven former Communist states have fulfilled the Brussels-determined threshold of adequate support for human rights and joined the EU. Consequently, EU-wide legal rights (understood as nondiscriminatory protection against infringement from individuals, groups, or the state) can be conceptualized as a form of European citizenship that promotes an integrated European identity. From the perspective of European institutions, adherence to LGBT rights as part of broader human rights discourse is therefore vital to the ideological cohesion and integration of the European project.

EU human rights standards are not, however, uniformly upheld or enforced throughout the organization's member states. Although limited formal LGBT anti-discrimination laws exist in all EU member states and the European Court of Human Rights (ECtHR) has banned legal differences between states that provide more LGBT-oriented legal protections and those that do not. Some member states lack provisions for LGBT citizens that other European states consider basic legal protections; for example, LGBT rights standards are not uniformly upheld or enforced across the European Union (EU).
are no specific transgender protections in Bulgaria, and there are no protections for the equal provision of goods and services to LGBT people in Poland.30 Notably, such diverging attitudes among EU member states concerning LGBT rights provision are subsequently translated into disparate policies at the transnational European level, such as the European Parliament’s inability to agree on a non-discrimination directive.3 As this article argues, a lack of consensus among EU member states about the need to protect LGBT rights allows those rights to become political bargaining chips—both at the member state and EU-wide levels—rather than fundamental human rights. Using examples of differing LGBT protection across the EU, particularly regarding same-sex unions, this article will examine the EU’s inability to enforce compliance with LGBT rights standards in Hungary and, subsequently, the EU’s hypocritical and contradictory foreign policy that both demands and ignores LGBT rights in Serbia and Ukraine, respectively. I contend that this political bartering of LGBT rights erodes the value of human rights as Europe’s ideological unifier, undermines the EU’s ability to demand rights adherence from candidate states, and threatens necessary European integration at a time of increasing economic and political challenges.

Europe’s ‘Lack of Consensus’ on LGBT Rights: The Case of Same-Sex Unions

Divergent policies on LGBT issues between European states, particularly in the case of same-sex unions, are legal as either gender-neutral marriage or civil unions. Currently, ten Western European states legally recognize same-sex unions,3 with a further nine states across Eastern Europe recognizing same-sex partnerships.36 seven Eastern European states introducing constitutional amendments that ban same-sex marriage.37 This uneven and apparently regionally specific legalization of same-sex unions fuels stereotypes of a divided Europe, with Eastern Europe falsely understood as uniformly homophobic38 and Western Europe imagined as the pro-LGBT bastion of modernity.39 As the scattered legalization of same-sex un-ion violates, however, legislation for same-sex unions is not region-specific, and to defer to such pre-conceptions masks nationally specific discourses about LGBT issues.36 Rather a uniform discourse on LGBT rights across Europe, debates on such issues take a minority rights approach in Romania, a citizenship and gender identity,35 while at the same time the European Parliament report on cooperation with the African, Caribbean, and Pacific Group of States, for example, called for nondiscrimination on the basis of sexual orientation and gender identity,40 while at the same time the European Parliament failed to enforce such demands on its own member states. This hypocrisy not only undermines the EU’s credibility in foreign policy, but also threatens to undo the ideological cohesion that human rights rhetoric is intended to maintain. LGBT Rights Regression in an EU Member State: Authoritarianism in Hungary

After a landslide election victory in 2010, Hungary’s conservative Fidesz party, led by Prime Minister Orbán, has allowed the Hungarian government to implement and maintain anti-LGBT policies without fear of EU-level political or financial repercussions. Notably, Orbán has gone to great lengths to create an image of himself as the bearer of ‘traditional Hungarian values’; supporter of the heterosexual, nuclear family;41 and a proponent of intolerant and homophobic rhetoric.42 This effort culminated in his enactment of a new Hungarian constitutional amendment in 2012 that defines marriage as a “conjugal union between a man and a woman,” which “protects the institution of the family”43 and notably lacks any protections on the basis of sexual orientation. Support for Orbán’s hardline anti-LGBT policies by his Fidesz party stands in stark contrast to the previous Hungarian parliament’s legalization of civil unions in 2007, by the left-wing coalition of the Hungarian Socialist Party and the Alliance of Free Democrats. Similarly, current parliamentary supremacy has even introduced a constitutional amendment that diminishes the authority of the Constitutional Court to review laws or refer to the Court’s past decisions in future judgments. Attempts by EU leaders—such as the European Commission, the Brussels-based executive body of the EU—to curtail the prime minister’s authoritarian moves against LGBT groups have also yielded few results. Notably, the EU Commission President, Jean-Claude Juncker, has remained silent Hungary’s internal politics, and the EU even reaffirmed its support for Hungary’s (costly) attempt to provide Hungary’s (€25.4 billion) in structural and investment funds from 2014 to 2020,44 ignoring opposition from Norway, a non-EU state. It is in this way that Orbán has utilized homophbic demagoguery for a strong majority mandate to consolidate his power and implement anti-LGBT policies. Orbán’s backsliding on LGBT rights and his authoritarian policies also illustrate his unwillingness to effectively enforce member state compliance with EU standards. Despite anti-discriminatory protections for
LGBT individuals at the European level, EU membership status does not therefore equate to the enforcement of these legal protections for LGBT citizens nor sustained positive legal reforms, let alone progressive attitudes toward LGBT groups.

**LGBT Rights and Conditionality: Serbia’s Bid for “Europeanization”**

In comparison to Brussels’ weak response to Hungary’s disregard for LGBT rights, the EU maintains a strong negotiating position in its (arguably hypocritical) demand for LGBT rights in EU candidate states. Notably, with an increasing number of member state “veto points” in EU accession bids—where states can demand political reforms or concessions from the candidate state in order to influence or stop the accession process—there has been an increased scrutiny of human rights standards, and displays of government support for public LGBT events now appear to be an unoffical requirement of EU candidacy.

As part of Serbia’s EU candidacy, the EU has demanded demonstrable acceptance by Serbia’s elites of domestic and international LGBT groups, with minority protections and acceptance of human rights considered by many in Brussels as fundamental to the acceptance of a post–Balkan War “Serbia after democratic changes.”

In 2014, the Serbian government’s permission to host an LGBT pride march in its capital, Belgrade—an event that was cancelled the previous three years, citing “safety concerns”—was considered by elites in both Brussels and Belgrade as a sign of the Serbian government’s support for LGBT rights and a positive step forward in its candidacy for EU membership. Indeed, attendance by a number of ambassadors from the EU and the United States as well as Serbian elites such as the mayor of Belgrade, highlights international support for the pride event and support for the “Europeanization” of human rights in Serbia.

The head of Serbia’s EU negotiations team, Tanja Miscevic, told reporters that “this drastically changes the image of Serbia in relations with its European partners and shows that Serbia is prepared to endorse the same values as the countries of the EU.”

Despite the inconsistent adherence to LGBT rights among member states, the EU is still capable of effecting displays of support for LGBT rights in candidate states. Although it is questionable to what extent the attitudes of individual political leaders in Belgrade have improved toward LGBT rights, the example of Belgrade Pride does emphasize the “carrot” of EU membership as an incentive for the state to tolerate LGBT groups.

The supposed carrot of EU membership yields uncertain benefits for LGBT individuals in Serbia, however, as elites manipulate LGBT groups by allowing “acceptable” organizations international visibility in order to better negotiate the terms of their membership.

While introducing pro-LGBT measures in order to appease Brussels is not a new initiative by a candidate state, the drive for acceptance of Brussels-approved LGBT initiatives (such as Belgrade Pride) has been accused of promoting “European standards” at the expense of other needs, such as improved legal protection for LGBT individuals in Serbia.

Indeed, persisting institutionalized homophobia, as well as increasing social conservatism and clericalism (a consistent trend relating to increasing church attendance in post-Communist Europe), continue to render the Serbian public sphere a challenging place for LGBT groups.

Although pride festivals do provide visibility to LGBT groups, they do not necessarily respond to the individual needs of the LGBT community.

Broader examination of the EU’s “inclusive exclusion” of the Western Balkans—the promise of EU membership conditioned on mutable demands for reform—indicates that Brussels may be requiring strict displays of support for LGBT rights in order to delay accession by those states. Enlargement fatigue within the EU, in particular regarding candidate countries in the Western Balkans such as Serbia, decreases the willingness of both member states and the European Commission to admit new members states that are either currently deemed unsuitable for membership (with European Commission President Jean-Claude Juncker extending EU enlargement timelines by at least five more years), or in a weaker negotiating position than the EU. LGBT rights, therefore, are becoming a bargaining chip in the EU accession process rather than fundamental rights that should be equally enforced in all EU member states.

Ignoring LGBT Rights: The Brussels-Moscow Frontier in Ukraine

In contrast to EU demands for LGBT rights in Serbia, rising geopolitical tensions over Russia’s annexation of Crimea and support for separatist movements in Eastern Ukraine have resulted in the EU shelving the question of LGBT rights in favor of accelerating Ukraine’s political integration. For example, the 2014 EU negotiations concerning Ukraine’s progress from phase I to phase II of visa-free access to the EU, failed to include an anti-discrimination bill that protects the rights of sexual minorities. This is indicative of the EU’s lack of consensus with the interest group of incentivizing Ukraine toward Brussels (and therefore away from Moscow) at the “risk of undermining its key human rights principles.”

Apparent awareness of the EU’s wavering support for LGBT rights, anti-EU platforms in Ukraine frequently highlight the EU’s support for anti-discrimination measures in defense of Ukraine’s relationship with Brussels—such as Vladimir Putin’s goddaughter’s similarly employs anti-LGBT rhetoric as part of its advocacy against Ukraine’s integration with the EU.

In the Ukrainian context, the debate over LGBT rights is frequently articulated in terms of a Moscow-Belgrade dichotomy, in which LGBT subjects represent the embodiment of a Western European—and, by implication, anti-Russian—polity, and homophobic, heteronormative rhetoric upholds a traditional model of Russian-backed masculinity. The Ukrainian parliament’s removal of a Russian-inspired “gay propaganda” bill from its 2015 legislative agenda (with parliamentary deputies instead voting to name Russia an “aggressor state”) furthers the closes association in Ukraine between the EU and LGBT rights, despite the EU’s lack of coherent, pan-EU LGBT advocacy.

Ukrainian far-right’s unease concerning Russia’s increasing aggression therefore appears to override demands for LGBT rights in Ukraine that are otherwise required of Serbia and other EU candidate states. LGBT rights seem to be ignored when perceived as a hindrance to larger EU objectives—in this case, preventing further Russian absorption of Ukrainian territory—but demanded when they are of no consequence to delay a state’s accession process, as in the case of the Western Balkans. If human rights, and therefore LGBT rights, are considered vital to the ideological cohesion of the European project, then inconsistent demands for the legal protection of LGBT rights within the EU are counterproductive, particularly in the face of Russian hostility that necessitates ever-greater EU cohesion.

**Correcting LGBT Rights Inconsistencies in the EU**

This article endeavors to show that the mutable status of LGBT rights vis-à-vis from a post-Communist EU becomes evident when the EU’s inconsistency toward LGBT rights is illuminated. Persisting differences between national policies toward LGBT rights are maintained by Brussels’ inability to enforce rights adherence within member states, highlighted by Hungarian Prime Minister Orbán’s introduction of homophobic legislation. Furthermore, the EU’s variation in demands for LGBT rights in its foreign policy negotiations with Serbia and Ukraine indicates that the fluctuation in the enforcement of LGBT rights may flow from Brussels’ consideration of LGBT rights as a political bargaining chip rather than a fundamental human right.

The exploitation of these divergent member state attitudes to LGBT rights undermines the use of human rights as an ideological adhesive between otherwise dissimilar European citizens, and threatens European integration at a time when financial crises, increasing internal nationalism, and external militaristic aggression demand greater EU unity. Consequently, LGBT rights must be reconsidered as a priority for both Brussels’ and existing EU member states.

Indeed, Brussels’ failure to demand EU-wide LGBT equality is a reminder of how far LGBT rights have yet to go in Europe before they can be considered indispensable from human rights and the European project.
ENDNOTES

1 With special thanks to Christopher Healy, Andy McGuffie, Tomasz Dudek, and Kyle Shenik.
5 “Secretary Clinton’s Historic Speech on LGBT Human Rights—‘Gay Rights Are Human Rights,’” YouTube video, 6 December 2011.
13 ILGA-Europe, ILGA Europe Rainbow Map (Index), May 2013.
15 Civil marriages are open to same-sex couples in Belgium, Denmark, Finland, France, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom (excluding Northern Ireland).
16 Civil partnerships are open to same-sex couples (where marriage is not also available) in Austria, Croatia, Czech Republic, Estonia, Germany, Hungary, Ireland, Malta, and Slovenia.
17 Constitutional amendments are in Bulgaria, Croatia, Hungary, Latvia, Lithuania, Poland, and Slovakia.
19 Robert Kulpa and Joanna Miziołek, eds., De-Centering Western Sexualities: Central and Eastern European Perspectives (Farnham, UK: Ashgate, 2013), 2.
22 Beges, Tensions in the Struggle for Sexual Minority Rights, 49.
25 Ibid., 212.
26 ECtHR established in 1959 on the basis of Article 19 of the European Convention on Human Rights, a convention adopted by the 47 members of the Council of Europe and separate to the EU.
27 Such as decriminalizing homosexuality (Dudgeon v. UK 1981) and banning distinctions based solely on sexual orientation (Salgueiro Da Silva Monte C. v. Portugal 1999).
29 ECtHR ruling from Hämaläinen v. Finland (2014), Application no. 37359/09.
31 Proposal for a Council Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Religion or Belief, Disability, Age or
32 Treaty of the European Union, Article 3 (3).
37 Yigal Schleifer, “Hungary at the Turning Point,” Slate, 3 September 2014.
38 Bodnar and Šledžitić-Simo, “Between Recognition and Homophobia,” 211.
40 Fourth Amendment to the Fundamental Law of Hungary, Article 1, February 2013.
44 “Fide, Bulgarija and România’s Accession Questioned the Credibility of EU Enlargement,” EuroActiv, 26 June 2014.
46 Jelisaveta Blagojević, “Between Walls,” Pro-European Officers and State Officials who have little experience with, the established conditions of recognition prior to legal gender recognition, they still retain official structures that—either explicitly or implicitly—pathologize gender identity. In the United Kingdom, applicants for recognition are not required to undergo gender confirmation surgery, but they must present evidence of a “gender dysphoria” diagnosis. In the Netherlands, specialized gender teams do not treat trans* persons as part of the recognition process, but they must confirm an applicant’s intention and capacity to legally transition. This article explores the “pathologization” of legal gender recognition. It discusses the forms in which pathologization-based reasoning arises and considers the suggested policy rationales for treating trans* identities as a mental health concern. The article challenges the continued medical supervision of legal gender recognition, and advocates the alternative self-declaration model adopted by law makers in Argentina and Denmark.

**Introduction**

In April 2014, Amnesty International published its highly anticipated report on access to gender recognition in Europe.1 The document, entitled The State Decides Who I Am, reflects generally upon the experience of trans* individuals in seven European countries, but focuses specifically on the hardships created by arbitrary or unattainable preconditions for legal recognition. Since 1972, when Sweden first introduced official acknowledgment for an individual’s preferred gender,2 legal systems have sought to limit the State respect for their true identity, trans* persons, in Europe and beyond, have traditionally been required to satisfy a number of “conditions of recognition,” including medical sterilization, gender confirmation surgery, and forced divorce.3 These requirements not only infringe on the basic human rights of trans* individuals—including bodily integrity, family life, and nondiscrimination—but also appoint third-party actors, often the State itself, as the ultimate guarantors of legal gender. Rather than respecting the agency of the individuals who live their gender on a daily basis, the established conditions of recognition prioritize the opinions, and frequently the prejudices, of medical officers and state officials who have little experience with, and even less understanding of, diverse gender identities.

Restrictive and unattainable preconditions continue to characterize legal gender recognition around the world. Yet, in recent years, there have been nascent signs that policy makers increasingly understand the harms generated by such prerequisites. Starting with the United Kingdom’s landmark Gender Recognition Act 2004 (“the 2004 Act”), legislatures and courts have begun to move away from requirements for mandatory surgery. In December 2014, New York City became the latest jurisdiction to adopt new rules. Trans* persons in New York City can now amend their birth records with only a supporting “affirmation” from a physician or similar professional.5 Beyond medical treatment, there is also a growing realization that legal gender recognition should not affect an applicant’s marital status and, within some jurisdictions, that the State should even acknowledge the preferred gender of minors. These developments significantly increase the accessibility of legal gender recognition and, in consequence, may greatly improve the life quality of trans* persons. However, for the most part, the improvements have arisen in an environment that continues to promote medical officials and state actors as the gatekeepers of gender.6 An applicant may be entitled to legal recognition without surgery, but medical professionals can still refuse the necessary support for their request. State officials are losing the power to use civil status as a justification for rejecting an application, but...
in many countries, such as the United Kingdom, state-appointed “gender panels” still retain the ultimate discretion whether to extend recognition. Trans* individuals have not obtained a global right to self-determination. It is that there exists a belief that “who I am”—that trans* advocates and their allies will increasingly have to undertake in years to come.

"Gatekeepers of Gender": State Control over Legal Recognition

The issue of control in legal gender recognition concerns two interconnected questions. First, who assigns a person’s legal gender? Second, why is an individual assigned one gender and not another? In almost all jurisdictions around the world, the answer to these inquiries is: (1) the State, or a state-appointed actor, and (2) because the individual satisfies specific criteria that the State has established for ascribing that gender.

State control of legal gender recognition frequently manifests itself through the use of pathologization-based reasoning.1 Pathologization involves linking transgender identity to mental impairment. Under this approach, a person who identifies with, or expresses, a gender identity other than their birth-assigned gender is considered to be inherently disordered.2 Depending on the jurisdiction, the pathologization of gender can also include “transsexualism,” “gender identity disorder,” or “gender dysphoria.” The existence of a diagnosis is normally a precondition for obtaining funding for transition-related treatments during the transition process and can act as the trigger to access appropriate health care pathways or legal recognition. In this regard, it should be understood that a pathologization-based model does not grant a diagnosis with “transsexualism,” “gender identity disorder,” or “gender dysphoria.” The reality is that many trans* persons do not experience their gender identity as a mental health concern.19 The continued belief among state officials that applications for legal gender recognition include the stated aim of the Dutch and Irish recognition models and the wider regulation of gender identity. A pathologization-based model fails to comprehend the important differences between legal gender recognition—the process of accurately reflecting a person’s civil status—and medical transition—a process whereby trans* individuals may access gender confirming treatments, including surgical, hormonal, or mental health interventions.40 While there may be cogent arguments that entry into health care pathways should require evidence of medical necessity—although recent legislation in Argentina challenges even that belief5—the policy makers have yet to offer a convincing explanation as to why legal recognition, particularly in those regimes that do not require any specific medical treatment, should be conditional upon a medical diagnosis.

The reality is that many trans* persons do not experience their gender identity as a mental health concern.46 These persons feel no discomfort or distress because of the fact that their gender identity conflicts with the gender assigned to them at birth. In some cases, such individuals may experience either frustration because of incongruence in their identification documents or anxiety because of the public’s reaction to their gender expression; these responses, however, are the natural product of social prejudice and discrimination. They are similar to feelings that any other oppressed minority experiences and should not be considered as speaking to an inherent disorder.57 Many people seeking legal gender recognition simply have no need or desire for medical intervention. Yet, as a consequence of pathology and the law for diagnosis with “transsexualism,” trans* populations around the world experience disproportionately low levels of health care,58 even finding mental health services may prove a challenge for some applicants. For those who can access treatment, the absence of discomfort or distress may cause them to question their ability to obtain adequate diagnoses.8 If gender dysphoria is considered to be a legitimate medical condition, it is possible to conclude that the Dutch and Irish regimes are not conditional upon the presence of gender dysphoria. Trans* persons in Ireland and the Netherlands do not have to accept that they are inherently disordered in order to access their basic civil rights. Yet, under both schemes, medical professionals, while not required to provide a diagnosis or gender confirming treatments, do retain a significant gatekeeping role. Dutch and Irish law requires that applications for legal gender recognition include a supporting statement from an expert medical officer. The statement must confirm that the individual intends to transition and understands the consequences of legal gender recognition. Submission of the expert’s statement is a mandatory condition of legal gender recognition, and an application will not be approved before the statement is received.

There is an undoubted inconsistency between the purported aims of the Dutch and Irish recognition models and the reality that has been revealed. It is hard to accept that legal gender recognition in either jurisdiction has been deeply depathologized if support from a doctor or psychiatrist still determines the success of an application.46 If gender recognition is not a medical process, why must trans* people have any dealings with health care providers? Individuals who seek to change their civil status through marriage or amend their name through deed poll are subject to no similar requirements. A doctor need not certify that a would-be
spouse is capable of understanding the consequences of marrying. Surely the simple fact that Dutch and Irish policy makers feel the need for medical supervision of the recognition process at least minimizes that trans* persons, unlike cisgender individuals, do not enjoy full control of their mental capacities. Yet, this is the exact reasoning that depathologization, and the removal of a diagnosis requirement, seeks to avoid. Omitting a requirement for medical treatment will undoubtedly open up legal recognition to a greater number of applicants. However, it would be wrong to assume that, without further legislative action, this omission can make Dutch and Irish trans* persons the gatekeepers of their own gender.35

If policy makers do seek to achieve full self-determination, a preferable model can be seen in the recent reforms adopted by the Argentine and Danish parliaments. In both jurisdictions, legal gender recognition, like in Ireland and the Netherlands, is no longer conditional upon evidence of physical treatment or a diagnosis of gender dysphoria. However, in contrast with the Dutch and Irish regimes, Argentina and Denmark do not require support from a primary treating physician or gender expert. Indeed, under Article 4 of the Gender Identity Act 2012 ("the 2012 Act"), trans* persons in Argentina need only submit a declaration affirming that they come within the protection of the law and that they desire an amendment to their gender records. In Denmark, applicants for recognition must observe a six-month waiting period after they first submit their request to state officials. However, once that time elapses, administrators are required to process the application solely on the basis of the individual’s declared gender. In this way, both Argentina and Denmark have succeeded in creating a legal gender recognition scheme that, to a greater extent than any other jurisdiction, respects the self-determination rights of trans* persons.36 During the six months following its introduction, almost 2,000 individuals invoked the 2012 Act in order to obtain legal recognition of their true gender.37 There have been no reported cases of cisgender persons using the new law in order to commit fraud or perpetrate an assault.38 Indeed, having regard to the significant discrimination that individuals face worldwide because of their gender identity, it is highly disingenuous to suggest that trans* persons would gain an unfair advantage by self-determining their legal gender.

Conclusion

Around the world, legal gender recognition rules remain tied to arbitrary, often unattainable, preconditions. In a health care environment where trans* persons frequently struggle to obtain even basic treatment, it is unrealistic to assume that all applicants for recognition can, and will, access expensive, highly specialized medical interventions. To the extent that policy makers—both in the United States and further afield—have begun to decouple the processes of medical and legal transition, this is a welcome step that reflects the lived realities of trans* communities worldwide. Yet, even under the most progressive recognition regimes, trans* persons rarely stand as the arbiters of their own gender. Pathologization-based reasoning, most frequently seen through a “diagnosis requirement,” invests state-appointed actors with the power to determine gender. Trans* individuals, the people who live their gender on a daily basis, are dismissed as mentally ill or “disordered” and are forced to conform to medical preconceptions and prejudices about gender identity. Despite recent reforms in Argentina and Denmark, trans* persons and their allies have not yet obtained a right to self-determination. Moving forward, achieving this basic, yet fundamental, entitlement represents an important next step in the road toward true and meaningful equality.

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Before commencing his doctoral studies, Dunne worked as a Harvard Law Fellow at the International Gay and Lesbian Human Rights Commission (IGLHRC) in New York City. In this role, he engaged in human rights documentation and sexuality-based advocacy work before the United Nations Human Rights Treaty Bodies. In 2013, he was selected as an Arthur C. Helton Fellow of the American Society of International Law, and worked as a national and international law advisor to Transgender Equality Network Ireland (TENI). Dunne has previously been awarded the Pride Law Fund and Equal Justice America Fellowships to work at the Gay and Lesbian Advocates and Defenders (GLAD) in Boston. He has volunteered as a human rights law advisor to Intersex and Transgender Luxembourg and as a student advocate with the Massachusetts Transgender Legal Advocates (MTLA). From 2012 to 2013, he worked as a trainee lawyer at the Court of Justice of the European Union and at the Financial Services Ombudsman Bureau of Ireland. In 2014, he was elected to the TENI Board of Directors.

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In Turkey, Article 40 of the national Civil Code requires that an individual who seeks legal gender recognition must satisfy a court that they have submitted medical evidence that they are “of a transsexual nature.”

For a discussion about the different forms of transitioning, see generally: Paisley Currah and Lisa Jean Moore, “We Won’t Know Who You Are: Contesting Sex Designations in New York City Birth Certificates,” Hypatia 24, no. 3 (2009): 113-135.


Article 11 of Argentina’s Gender Identity Act 2012 provides “All persons older than eighteen (18) years, according to Article 1 of the current law and with the aim of ensuring the holistic enjoyment of their health, will be able to access total and partial surgical interventions and/or comprehensive hormonal treatments to adjust their bodies, including their genitalia, to their self-perceived gender identity, without requiring any judicial or administrative authorization.”

United Nations Development Program (UNDP). 19

ENDNOTES


7 Peter Dunne, ‘The Physician’s Statement Requirement in the Revised Gender Scheme of Gender Recognition Bill 2014. Transgender Equality Network Ireland (TEND), 2014; “Reading Between the Lines,” interview with Mauro Cabral, Stop Pathologising Gender Diversity in Childhood blog, 10 September 2014.


9 In Turkey, Article 40 of the national Civil Code requires that an individual who seeks legal gender recognition must satisfy a court that they have submitted to gender confirmation surgery. A person may only access such surgery with court permission. As part of the permission application process, the individual must provide medical evidence that they are “of a transsexual nature.”

10 For a discussion about the different forms of transitioning, see generally: Paisley Currah and Lisa Jean Moore, “We Won’t Know Who You Are: Contesting Sex Designations in New York City Birth Certificates,” Hypatia 24, no. 3 (2009): 113-135.


14 Lisa Morter, “Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender
Police Violence and Social Bigotry Against Hijras in India

By Sreya Banerjee

ABSTRACT

The hijras are a group of gender variant people, popularly considered as the third gender/sex in South Asia. Indian history depict hijras as spiritually powerful figures who were once significant and integrated members of ancient Indian society, prior to being criminalized by colonizers during imperialism. Considering the emerging gender and sexual politics in India, this article focuses on daily violence experiences and oppression of hijras, shaped by discriminatory policies and legislations. First, I discuss sociocultural practices as an attempt to understand the process of becoming and living as a hijra. Second, by examining foreign intrusion, I highlight the impact of reemploying colonial laws and legislations (i.e., Section 377 of India’s Penal Code) in the development of sexual and physical violence against hijra communities. This includes extortion and abuse by the police, rape and harassment by clients during sex work, and familial abuse and coercion. Furthermore, this examination will reveal and highlight the roles of class, caste, and patriarchy in forming discriminatory discourses and doctrines around hijra culture and practices. I argue that the reinstatement of Section 377 (in December 2013) and legal recognition of third gender (in April 2014) fail to address the daily hate crimes perpetrated by the police, family members, and clients against hijras. Therefore, it is necessary to import a sociological approach to reevaluate and change social norms before introducing new state laws. The purpose of this article is to draw a greater attention to the connections between the social and legal systems to understand how visible gender and sexual identities are suppressed, dehumanized, and tolerated within sociocultural and legal institutions. Lastly, I explain the significance of a hijra epistemology in generating distinct intersections between notions of gender and sexuality, class, survival techniques, identity/autonomy, power, and activism.

I screamed that I did not want to go into the cell. I fell at the policeman’s feet. He kicked me with his boots. He then asked me to take my clothes off—right there, while the prisoner was watching. I pleaded with him and wept, but he forcibly stripped me. When I was standing naked, he struck his lathi where I’d had my operation and demanded that I stand with my legs apart, like a woman would. He repeatedly struck at that point with his lathi and said, “So, can it go in there? Or is it a field one can’t enter? How do you have sex then?”

— A. Revathi

Introduction

The above quote paints a vivid image of the kind of police abuse hijras’ in India experience because of their gender, sexuality, chosen lifestyle, and self-constructed culture. A. Revathi is now a well-known hijra author and activist who beautifully articulates the intersection between sociocultural, economic, and political discrimination and the dangers involved in the trajectory of sex work.

The core of this article discusses the connections between notions of gender, sexuality, identity/autonomy, political power, and legal techniques to understand human rights issues of hijras related to violence and abuse. Referring to original cases and personal narratives of physical, sexual, emotional, and verbal abuse inflicted on hijras, this article argues that the restoration of Section 377 of India’s Penal Code combined with insufficient policies addressing the lack of hijras’ rights is a detriment to their status as citizens. Indian government’s legal acknowledgment of transgenders as “third gender” reserving a specific quota of jobs for hijras and encourages them to pursue an education, but this recognition does not prevent the daily discrimination and violence hijras face in society. There are no legal actions being carried out to address the violence and harassment perpetrated by the police, clients of hijra sex workers, and family members. Hence, it is important to attend to the social oppression and marginalization of hijras through policy that prevents “social cleansing” of transgender/transsexual communities. This may shrink the gap between social and legal approaches to understanding
gender variant people in India, improving their status as citizens. Presently, hijras and their subgroups are often regarded (synonymously and interchangeably) as eunuchs or transgender/transsexual/queer people, the latter terms being popularized after the expansion of their public visibility and LGBT movements. While the Western terminologies—transgender, transsexual, queer—are used to address a wider global audience, the traditional South Asian terminology, hijra, identifies third gender people. This term is “sterile, impotent, castrated, a transvestite, a man who is used to refer to the emasculation operation anchored in traditional terms vary between South Asian cultures and languages. A hijra is “a eunuch, or someone who is ‘sterile, impotent, castrated, a transvestite, a man who has had sex with other men, who had anal sex, a man with mutilated or defective sexual organs, a hermaphrodite, or finally a man who produced only female children.” This traditional definition, shaped by religious understanding of gender roles, paints this group as an “other” gender class outside the social norm. Some transgender/transsexual people may prefer to identify as women, while others are comfortable with the hijra identity. However, offensive interpretations continue to play a significant role in influencing homophobic and discriminatory attitudes toward the hijra community.

The Criminal Tribes Act of 1871 reinforced these social stigma by denouncing hijras as Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBC). These status groups were meant for members of the lower castes/class who were allotted a certain number of reserved seats in educational institutions and government jobs. In 1952, the Act was renamed the Habitats (Hindu) Immigrants and Harim Parties Act and continued to oppress such groups of people. In 1860, the British introduced Section 377 of the Indian Penal Code, which continues to influence the legal system and its social consequences. In this sense, “tolerated” or “accepted” means that hijras are expected to engage only in sex work or dance and sing for survival, because such activities are normative and allocated for them to belong to a lower social class. Thus, any effort to uplift their own communities (by holding alternative jobs for instance) is intolerable because they are not supposed to step out of the assumed roles as ceremonial performers/sex workers.

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The quote from A. Revathi at the beginning of this article depicts the desire and curiosity to visually witness an authentic hijra body. It implies that their physical appearance is put on display to perpetuate the act of “othering.” Such dehumanization of the body through sexual exploitation exposes the police officer’s anger toward the act of a man (who is deemed superior/dominant) physically transforming into a woman (who is deemed subordinate). It is notable that activists who work to support hijra/LGBTQ rights in India are also vulnerable to police harassment for contesting the Indian Human Rights Watch, the “police arrested free hijras in the Girinagar neighborhood of Bangalore, charging them with ‘extortion,’” which was followed by a “drive against a group of transsexual men and women.” In this sense, “tolerated” or “accepted” means that hijras are expected to engage only in sex work or dance and sing for survival, because such activities are normative and allocated for them to belong to a lower social class. Thus, any effort to uplift their own communities (by holding alternative jobs for instance) is intolerable because they are not supposed to step out of the assumed roles as ceremonial performers/sex workers.

The Hindu scriptures and consciousness and the dawn of a higher consciousness.”

During the colonial period, hijras and their subgroups held respected social positions. Hijras owned properties and land, and were financially independent in pre-colonial periods. They held respectable status in Mughal India as integrated members of society. Under Muslim rule, the hijra were the entryway for hijras into the court system as “political advisors, powerful administrators, and chamberlains,” as well as trusted generals and guardians of the harim, or inner/male family domains. The elites in pre-colonial India trusted them for being “gender-neutral, non-‘stereotyped’ individuals . . . incapable of impregnating women . . . and yet capable of ‘manly’ protection.” Hijras were considered loyal, trustworthy, and protective servants because of their feminine attributes.

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The Violence of Hijras in Present-Day India

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police batons and sexually harassed two of the activists and hijras while putting them in a cell.26 In Sanmari Duta’s case, she was harassed by the police even when she was not engaging in sex work at the time. As reported to the Human Rights Watch, in November 2008 Duta was suddenly stopped by the police on Irving Road in Bangalore and verbally abused.27 This was followed by Duta being forced by her hair for almost a kilometer, while several onlookers observed passively. One of the officers said, “See, you people, if I hit you, if you hurt you, no one is there to ask you, and no one is there to support you people. I will kick you, see how badly.”28

These are only a few of the many incidents involving police violations and hijras that occur in India on a daily basis. Due to their gender being inconsistent with their biological sex, hijras are unable to attain legal identity documents for fundamental citizenship rights, such as proper housing, employment, education, and in some cases, the right to vote. The lack of essential privileges isolates this group even more and makes them more susceptible to violence and exploitation.

Hijras as Sexual Citizens

Examining citizenship through the lens of sexuality depicts the ways hijras transcend political boundaries to experience the difficult realities of political, social, and economic positions. The viewpoints of Subramanian Swamy (Indian politician, economist, and a former cabinet minister) and Ravi (a hijra activist and fear of marginalization) in the video The Streets: India’s LGBT Debate are an example of the way hijras or LGBT people are tolerated by the law and society. This debate challenges the lifestyle, advocacy, and ideas of nonheterosexual people. Both Swami and Ravi point out that although heterosexuals should lead a “normal” life, they should not “ flaunt” their sexual desires as homosexuality is “a genetic flaw that needs to be cured . . . [and] a deviant behavior which requires medical attention.”29 Representing the legal field, Swami strongly argues, “We [Indian citizens] are a constitutional democracy, and our constitution has made it very clear that all fundamental rights are subject to reasonable restrictions which include morality, public health, and public order.”30 Yet, Swami does not explain why such “reasonable restrictions” apply to nonheterosexual people in the community specifically, even though they are Indian citizens.

Swami does not clarify how more visible gender variant people such as hijras are supposed to lead a “normal” life by pursuing their education and acquiring jobs, while they struggle with a lack of financial and moral support from the government and society. The privatization of sexuality is a core issue in Swami and Ravi’s standpoint, and shows how the impact of political injustice on hijras is often disregarded in such discussions and mainstream media coverage. This exchange of dialogue is an example that shows how hijras are tolerated by the law and society to maintain dominant notions of “proper” citizenship.

Domestic Abuse and the Dangers of Sex Work

In the process of becoming a hijra, one faces domestic violence and oppression as being another male or female in a society with fixed and hierarchical gender norms. Most effeminate men abandoned or challenged their assigned gender roles after developing personal/ssexual desires during childhood. The disconnection between the psychological self and the physical body is a common thread that links initial experiences and feelings of understanding one’s inner self. This is represented in Revathi’s description of her childhood experiences that include memories of struggling to perform gender roles based on biological identity despite strong feelings of detachment. Before becoming a hijra, Revathi felt like she was “a woman trapped in a man’s body” and often questioned the existence of her otherness as a “flawed being.”31 It was very important for her to become a woman and ensure that she is able to “marry an educated woman”32 and live with love and respect. These desires lead many to engage in feminine roles and behaviors such as dressing in female clothing, playing with dolls, secretly putting on makeup, and so on. However, this process is harmful for many, and they often feel at a disadvantage as their social roles and expectations are rapidly changing. The role and impact of hijras in current Indian society is not easy to comprehend.

When families are unable to comprehend the feelings, behaviors, and initial preferences of someone who may later become a hijra, feelings of greater and misconceptions transition into violence and abuse. Even in present-day India, there are many families who perceive nonheterosexuality as a phase, illness, or even a bad curse that one should address by taking appropriate measures (for example, psychological assistance, isolation, physical/verbal abuse, religious rituals). Parental influences and unequal power relations in the family result in various forms of negligence and humiliation when a male expresses feminine behaviors. Even in school, such individuals are treated as aberrations by their peers and teachers, which drives them to discontinue their education.

The 2003 report from the People’s Union for Civil Liberties (PUCL) and the Peoples Union for Civil Liberties Against the Transgender Community, includes descriptions of violent incidents shared by hijras. One of them explains:

When I was studying in my 10th standard I realized that the only way for me to be comfortable with myself was to join the hijra community. It was then that my family . . . found out that I frequently met hijras who lived in the city. One day, when my father . . . was away, my brother, encouraged by my mother, started standing along the road and singing. But I locked myself in my room to escape from the beatings. My brother and my mother together tried to break into the room to further beat me up.33

The isolation and neglect efficacement men experience within the family and in society push many to join a hijra community in search of their identity. The carefully structured hijra household provides an open space and welcomes one to embrace their inner self and the hijra lifestyle and culture. After the process of initiation, a hijra may still feel depressed and excluded. Its Myself/Mona Ahmed, hijra Mona Ahmed expresses her personal struggle with depression due to a lack of a sense of belonging, frequent relocation from one home to another, and society’s mistreatment against the third gender/sex.

An ongoing debate that is key to determining agency of hijras as prostitutes is recognizing the way hijras perceive sex work with a focus on notions of choice, coercion, autonomy, and identity. Sex work has been an avenue that allows several hijras to earn money and survive independently. The hijra communities are more vulnerable to HIV and AIDS because they grieve in silence from shame, stigma, and isolation due to the low level of condom usage between hijra sex workers and their clients. Police extortion, rape, and physical abuse by clients are the main issues that hijras endure regularly, but barely receive any assistance from the government for better security and safe space. (See Figure 1.34)

Gender and Sexual Politics

The human right to freely express gender and sexuality is in jeopardy because existing political/dominant discourse outlines one’s choice to be different and love another by looking past fixed gender norms. It is quite strange that although transgender/transsexual and homosexual people have existed as historical and religious figures in ancient India and across the globe, they are criminalized and dehumanized in current societies. The reason for this is not just the dominance of colonialism and the repressment of colonial sexual laws, but that the heterosexism and homophobic mentality ingrained in existing socio-political laws, policies, and practices that divide groups based on hierarchy and distinctions. The ways in which sex and sexuality are represented and influenced by class, hierarchies, subjective positions, and agency. This not only impacts one’s own process of forming their personal identity and choices of gender identity, but also how racial and sexuality are synthesized with individual identities such as class/caste, religion, and ethnicity and so on.

It is important to recognize that circumstances and limitations due to differences in class/caste, gender, and sexuality prevent hijras from obtaining reputable and dignifying jobs. In some cases, physical and emotional abuse at home or at work results in one to avoid the law, parents or teachers in an attempt to prove their masculinity, while being in a relationship with a nonheterosexual person. Expressing sexuality visibly often means putting on makeup, wearing feminine attire, roles, and behaviors. When one refuses to do so, they are often left homeless. In their personal stories, some hijras point out that after undergoing castration and supporting their family through sex work, they were not simply not accepted completely but they were no longer abused.35

Despite the expansion of several organizations, social/ safe queer spaces, helplines, and so on, “the support structures provided in [metropolitan and smaller cities] are painfully inadequate with few or no such organizations for lesbians, bisexuals, and trans.” The constant battle between authentic knowledge, power, and status—con- cerns represented in queer/hijra activism—is sufficiently articulated by the law.

Activist and scholar Ranajit Guha argues that “the domain of sexuality is policed not so much by the state in India but by the samaj [society].”36 Although I agree with both perspectives, I have to find out adequate responses or suggestions for colonial law and policies to be reformed to improve the daily struggles of hijras and queer groups in India. Considering Guha’s argument, I suggest that a proper assessment of hijras and sex work practices of hijras and hijra movements in India may develop information on how to revise existing methods (or create new ones) to reform state’s approaches to understanding and gender and sexual identity groups. Thus, the Swami study can include allowing gender variant candidates to become more actively involved in pol- tics, penalizing offenders for assaulting hijras (especially by setting up fast-track courts), and acknowledging hijras’ human rights as equal citizens. The role and impact of religious doctrines (especially in Hinduism, which follows the four aspects/purposes in human life—dharma, artha, kama, and moksha—and in the Manusmriti/The Laws of Manu)37 should be discussed and critically analyzed to understand how they shape societal norms and prejudice toward nonheterosexual relations in India. The process (even in India) to prove a change in gender and sexuality is lengthy, challenging, and dependent on religious beliefs. This may be true in some cities and many rural areas of India where there is a lack of exposure to emancipation and resistance toward comprehending new knowledge surrounding gender and sexuality. Hijra/queer activism attempts to encourage parents and families of nonheterosexual children to engage in dialogues about human rights issues and sexual health education. Through public speaking, workshops, and outreach work, activists
reach out to parents who struggle to accept their hijra queer children.

**Toward a Hijra Epistemology**

I believe that promoting hijra voices generates a hijra epistemology, a subaltern consciousness that extends and incorporates important notions of the body, gender, sexuality, and desire as challenging sites resisting dominant/hegemonic Indian discourses of “proper” citizenship and national belonging. My interpretation of a hijra epistemology is that it represents perception and knowledge on how hijra identities and subjective positions are produced and influenced by daily experiences, hardships, and articulation of the “self.” Through scholarly/ethnographic work and activism, hijras have found a platform to share their stories and educate one another. Discourses on hijra practices, desires, and the way they (struggle to) exist are epistemologically because they are justified as true knowledge shaped by personal experiences and observations.

A hijra epistemology uses an interpretivist approach to stress the importance of their subjective positions and experiences. This approach supposes that the researcher and the subject of research (in this case, hijras fulfill both roles) are interconnected in the sense that the way they understand others is shaped by how they understand themselves. Hijras/activists participate actively to create and configure their knowledge and wisdom in personal stories and narratives that deserve greater acknowledgment. A hijra epistemology represents, values, and makes sense of their realities through identity formation.

The purpose of a hijra epistemology is to (re)claim rights for their communities focusing on distinct social and cultural needs and issues. Their main goals are to address issues such as the lack of access to education, shelter, employment, and adequate health care. The hijra communities are more vulnerable to HIV (a rate of 37.5 percent to 41 percent according to recent studies), mostly due to the low level of condom usage between hijra sex workers and their clients. Police extortion and sexual abuse (by police and local goons) are also prevalent problems that hijras face regularly. A hijra epistemology points to the fact that existing laws (e.g., Section 377) and limited leeway suppress hijras even more. The minor changes proposed by the government thus far are not revolutionary as they do not create long-term social and legal reformation.

One might question, how is the content of a hijra epistemology distinct from other contemporary queer activist groups (e.g., lesbian, gay, and bisexual)? To address this question, one should think about hijra conditions that are predominantly shaped by class and cultural differences (as discussed above). Police brutality that undermines equal citizenship claims made by hijras is a major problem emphasized in the report published by PUCL-K. Hijra epistemology includes personal details of such incidents (many of which have yet to be addressed by mainstream human rights organizations) to show the connection between policing and dehumanization that aims to attack visible gender/sexual groups.

**Conclusion**

There is a significant lack of hijra voices that express thoughts about their lives and experiences during colonialism. As a result, there is not enough substantial evidence of their agency and/or collective initiatives in colonial India to connect their position and actions in the present. Even stories about specific cases involving same-sex people or the third gender are described through the lens of authority figures. This has changed over time with the progressive work of contemporary scholars and hijra/queer activists as they encourage the promotion of personal narratives and stories while demanding space, equality, and liberation. It is through agency and consciousness that several hijras and their counterparts have been able to resist, question, and challenge legal discourses of citizenship, whether it be through the media, activism, rallies, writing, or oral history.

Several hijra writers and activists imply that it is important to explore class/caste differences between traditional and contemporary identity categories, such as LGBT people and hijras, to understand on what grounds they are connected and divided. Acknowledging systematic erasures and barriers requires understanding the relationship between society and state politics/law. Social and political constraints are created, maintained, and intensified as a result of heterosexism within dominant sites such as the family, medical institutions, private and public spaces, the workforce, and popular culture. Respectable employment opportunities, access to education, and sufficient medical care are some of the crucial steps required to improve socio-political conditions of hijras. It is my hope that the growing advocacy and circulation of hijra voices will inspire sufficient long-awaited sociopolitical changes to occur in India.

SREYA BANERJEA completed her MA in gender, feminist, and women’s studies in October 2014 from York University in Toronto, Canada. Her research interests include the intersections of gender and sexual politics of women and LGBTQ people in India and diasporic South Asian communities. Banerjea plans on pursuing a PhD in gender studies with a research focus that examines bride trafficking in India through narratives and storytelling. At present, she is engaged in community projects and volunteers for nonprofit organizations that centralize human rights issues of women and LGBTQ people.
ENDNOTES


2 Definition of the term “hijra” follows as the article proceeds.


6 Mahapatra, “Supreme Court Recognizes Transgenders.”


8 Ibid., 26.

9 Ibid., 27.

10 Ibid., 26.

11 Ibid., 19.

12 Peoples’ Union for Civil Liberties, Karnataka (PUCIL-K), *Human Rights Violations Against the Transgender Community: A Study of Kothis and Hijra Sex Workers in Bangalore*, India, 2003, 41.


14 Figure 1 shows a hijra sex worker named Kajol. Alison McAuley, “A Tribe in Peril: The Hijra in Mumbai,” *Advocate.com*, 6 March 2014.


18 The Manusmriti, also known as *The Laws of Manu*, is one of the oldest Sanskrit texts, which includes religious and authoritative laws obeyed by the Hindus. These laws were written by Manu, who is believed to be a messenger of Brahma, the God of creation and also Manu’s father. The text expands on a wide range of topics such as origin of the world, marriage, procreation, gender roles and duties, social/religious rules and codes, etc. In regard to the third gender, the text states, “A male child is produced by a greater quantity of male seed, a female child by the prevalence of the female; if (both are) equal, a third-sex child [napumsaka] or boy and girl twins are produced; if (both are) weak or deficient in quantity, a failure of conception (results).” (Georg Bühler, trans., *The Laws of Manu* (London: Forgotten Books, 2008), Chapter 3, number 49.


By Felicity Daly

ABSTRACT

This health policy analysis seeks to understand why and how interventions to improve the sexual health of women who have sex with women (WSW) were initially proposed in the HIV & AIDS and STI Strategic Plan for South Africa for 2007-2011 and how this was reframed in the National Strategic Plan (NSP) on HIV, STIs, and TB for 2012-2016. A conceptual framework is used to summarize determinants of political priority setting for WSW issues in the NSP development process, although a focus on the sexual health of WSW was not maintained in the 2012-2016 NSP due to limits on political participation and growing politico-cultural conservatism.

Introduction

The need for effective policies to respond to the challenges presented by HIV/AIDS is critical in South Africa, where the burden of disease is considered to be among the highest in the global pandemic.1 National Strategic Plans (NSPs) for HIV and AIDS are important vehicles to guide HIV/AIDS policy responses and have supported the effective coordination of national responses to HIV/AIDS for over two decades, particularly in settings where other health sector strategies have failed to effectively control the epidemic.2 For a protracted period, South Africa’s policy response to HIV/AIDS was disorganized, influenced by discredited debate about the etiology of AIDS that led to entrenched political resistance in the provision of HIV/AIDS services, including antiretroviral treatment (ART), in the public health system.3 Following a successful legal challenge against the South African government that led to eventual ART provision in 2002, the South African National AIDS Council (SANAC) led a policy process to produce the HIV & AIDS and STI Strategic Plan for South Africa, 2007-2011.4 The development of the 2007-2011 NSP sought input from a wide range of actors from civil society organizations including advocates from the LGBT rights movement.5 Unique amongst other African political contexts, South African policy actors have a duty to protect LGBT people, as the 1996 South African Constitution outlawed discrimination based on race, gender, and sexuality. LGBT advocates raised concerns that other dynamics driving new sexually transmitted infections (STIs) required consideration beyond the common perception that South Africa’s generalized HIV epidemic was driven solely by heterosexual sex.

These advocates drew on surveys undertaken by LGBT community-based organizations from 2004 to 2006, which provided insight into the health status of LGBT people in several South African settings. Survey findings revealed higher prevalence than expected of STIs, including HIV, among women who have sex with women (WSW), a behavioral marker representing women who have same-sex partners independent of exclusivity and self-identification as lesbian or bisexual. WSW have traditionally been under-analyzed in high-income as well as low- and middle-income countries for a range of sexual and reproductive health concerns including risk of HIV transmission. A dearth of information on WSW sexual health has engendered a sense that HIV transmission is impossible among WSW, and it has been argued that this false consciousness “may expose WSW to a much higher risk for contracting HIV than is generally perceived.”6 For example, WSW engage in sexual behaviors as well as substance use, which pose clear risks for transmission of STIs and HIV.7 Public health arguments for addressing WSW sexual health needs have often been overpowered by concerns around heterosexual women because sexual transmission of HIV and other STIs is higher among heterosexual partners, particularly in generalized HIV epidemics throughout Africa. WSW concerns are also often overlooked within public health strategies targeting the LGBT community since these...
strategies focus on men who have sex with men (MSM), as receptive anal sex carries a relatively higher risk of HIV and STI transmission.13 WSW sexual health data from the LGBT community surveys undertaken in several South African provinces revealed that among 216 WSW in Gauteng, 9 percent of Black WSW were HIV positive (HIV+), while 5 percent of White WSW were HIV+. In addition, 208 of the WSW in the sample showed that 14 percent of Black WSW had an STI within the past twenty-four months compared to 4 percent of White WSW.14 A different survey of 392 WSW and MSM from KwaZulu-Natal reported that 12 percent of WSW had a recent STI and 9 percent of WSW were HIV+, a rate almost as high as prevalence among MSM in the survey (11 percent).15 In yet another survey of 460 WSW from the Western Cape, 9 percent of Black WSW had a recent STI compared to 3 percent of White WSW.14 These findings were considered significant both because they highlighted a relatively high burden of STIs, including HIV, among WSW and also because they demonstrated that Black WSW were at greater risk compared to White WSW.

The 2007–2011 NSP included a goal to target HIV prevention interventions to vulnerable groups including MSM, transsexuals (transgender people), and lesbians (WSW) while also addressing barriers these populations face to accessing public health services.16 Rarely are WSW targeted in public health interventions, and the inclusion of WSW in a national HIV/AIDS response has been slow. Ultimately, SANAC struggled with implementing some of the objectives of the 2007–2011 NSP, including the initiatives targeting MSM, transgender people, and WSW.17

When SANAC set out to develop the 2012–2016 NSP in late 2011, global health policy guidance on addressing key populations at higher risk for exposure to HIV urged the 2007–2011 NSP to target HIV prevention interventions within the 2012–2016 NSP as well as other health and social policies and programs no longer be justified by assertions that WSW face “low” or “no” risk of HIV or STI infection. South Africa’s 2012–2016 National Strategic Plan on HIV, STIs and TB maintained a focus on MSM, transsexuals (transgender people), and lesbians (WSW) as members of groups or organizations representing WSW issues in the NSP development process.

### Methods

This health policy analysis utilized qualitative methods to understand the policy process around the development of the 2007–2013 and 2012–2016 NSPs in order to scrutinize how and why interventions to improve sexual health and HIV-prevention efforts among WSW were initially proposed and how they evolved over time.

Data was collected through document analysis and twenty-five semi-structured interviews with key public sector informants, government donors, multilateral organizations, and non-governmental and community-based organization members, and academics involved in HIV policy and LGBT rights in South Africa.

The study drew on the model for health policy analysis developed by Gill Walt and Lucy Gilson, which considers, among other things, the factors at play when making health policy: context, content, and process with actors—as individuals and as members of groups or organizations at the center of shaping policy formation.18 The study used a theoretical framework adapted from one posed by Jeremy Shiffman and Stephanie Smith to analyze the categories of actor power, ideas, political contexts, and issue characteristics that play a role in decisions about which health issues are integrated into policy.19 Special attention was paid to the elements of the policies stream, policy windows, and policy entrepreneurship within a given category, which John Kingdon suggests are essential to influencing a policy outcome.20 This article presents selected findings from the analysis of the categories of actor power and political context as outlined in the framework shown in Table 1.

### Findings

Findings from the Theo Sandfort et al. study also confirmed that WSW face HIV and STI risks through sex with men. Half of the women surveyed had sex with men in their lifetime, and one in five had sex with a man in the previous year, including transactional sex and forced sexual experiences.16 Sexual violence is a significant driver of women’s vulnerability to HIV, and estimated prevalence of nonpartner sexual violence in South Africa is 12.2 percent, double the global rate.21 Transgressions of heteronormativity, a social concept that views heterosexuality as the normal or preferred sexual orientation, are punished violently in South Africa, and numerous cases of homophobic attacks on WSW have been termed “corrective rape,” perpetrated to “correct” or “cure” a woman of same-sex desire.22,23

Given the available data, South African advocates have argued that the exclusion of WSW in HIV prevention interventions within the 2012–2016 NSP as well as other health and social policies and programs no longer be justified by assertions that WSW face “low” or “no” risk of HIV or STI infection. South Africa’s 2012–2016 National Strategic Plan on HIV, STIs and TB maintained a focus on targeting HIV prevention interventions to MSM and transgender people within a broader set of domestically defined key populations.16 The 2012–2016 NSP did acknowledge challenges that WSW face in accessing public health services given that “discrimination against members of the community with . . . different sexual orientations (e.g., MSM and WSW) . . . may result in reluctance to attend health services for fear of discrimination” but made no specific commitment to provision of HIV/AIDS services targeting WSW as a distinct group.17

### Policy windows: political moments when conditions aligned favorably for WSW issues and have presented opportunities for advocates to influence decision makers.

### Governance structures: the degree to which norms and institutions guiding NSP development provide a platform for effective collective action.

### The public health value of the study is grounded in a human rights approach to health, particularly sexual and reproductive health, which considers the causal links between human rights violations and health and the ways that discrimination based on sexuality affects health.25 This study looks retrospectively at the 2007–2011 NSP to offer a relevant resource output to inform current SANAC discourse surrounding the review of the 2012-2016 NSP in 2015 and subsequent NSP development. Thus, it is timely to present a review of the strengths and weaknesses of advocacy for WSW sexual health within policy formulation opportunities afforded by SANAC.

### Table 1: Selected Categories for a Framework on Determinants of Political Priority for WSW Issues to Be Included in South Africa’s NSP

<table>
<thead>
<tr>
<th>FACTORS SHAPING POLITICAL PRIORITY</th>
<th>DESCRIPTION</th>
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<tr>
<td>Policy community cohesion: the degree of coaliTVIe in the networks of individuals and organizations involved with NSP development.</td>
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<tr>
<td>Policy entrepreneurs: the presence of individuals who seize opportunities, are capable of uniting the policy community, and are acknowledged as strong champions for WSW.</td>
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</tr>
<tr>
<td>Guiding institutions: the effectiveness of Department of Health (DoH) and SANAC mandated to coordinate the NSP.</td>
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</tr>
<tr>
<td>Civil society mobilization: the extent to which community-based organizations mobilized to press DoH/SANAC to address WSW issues (e.g., LGBT organizations).</td>
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</tr>
<tr>
<td>Competition and conflicts: both within civil society sectors and between civil society actors and public sector leadership.</td>
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</table>
The findings provide insight into SANAC policy processes and the opportunities these afford to civil society sectors representing the interests of groups involved in the national response to HIV, STIs, and TB. The findings showed that the SANAC sectors were a site wherein the prioritization of issues and interests was contested. Contestation in policy making sometimes leads to a refinement in agenda setting and enhances coordination but often results in competing interests. The results show that there are missed opportunities to consider strategic or emerging policy issues when the civil society sectors are mainly concerned with technocratic implementation of their funded work to deliver NSP priorities. Findings on the functionality of the SANAC LGBTI sector were centrally concerned with coordination and completion as well as questions regarding whose health rights are represented and addressed therein.

Gay men and lesbian women were involved in South African activism during the struggle against apartheid and worked in solidarity to secure their rights in the 1996 Constitution and subsequent laws outlawing discrimination on the basis of sexuality in the new South Africa. As has occurred elsewhere, gay and lesbian rights movements have expanded their agenda over time to assert the sexual rights of bisexual women and men and the right to self-determination of gender identity of transgender and intersex people. A platform for raising the interests of WSW in the context of HIV/AIDS emerged from the SANAC women’s sector in 2007. Afterwards, a recommendation was made to SANAC that there should be a separate sector to coordinate the agenda for WSW and other populations within the LGBTI communities.

In 2009, LGBTI people came to be represented by one sector in SANAC, and the sector began functioning by 2011. There are some general concerns with placing the health interests of all subpopulations of sexual and gender identities under one LGBTI category. This approach does not resonate with a public health focus on targeting interventions based on sexual behavior rather than identity. Within public health research at global and national levels, concerns around MSM vulnerability to HIV have been delinked from the sexual identities of gay and bisexual men in order to place attention on sexual behaviors and their corresponding risks. Arguments abound regarding the discourse on key populations under consideration for targeting of HIV and STI prevention programming in South Africa. Moreover, WSW advocates seemed unable to effectively marshal available evidence involving the burden of disease among WSW living with the HIV and STIs despite the existence of compelling research cited earlier. As a result, the policy content of the 2012-2016 NSP failed to maintain a focus on the sexual health needs of WSW. Other main findings in the context of actor power and political context are detailed in Table 2.
It is problematic that there is a conflation of a broad spectrum of LGBTI concerns with a focus on only the populations commonly recognized as facing higher HIV risk: MSM and transgender women. A precarious precedent is being set that makes it seem that LGBTI people’s health needs are broadly represented and responded to in South Africa, while lesbian and bisexual women in particular remain unaccounted for in HIV and STI programming despite the available data showing WSW vulnerability in the South African epidemic context. This conflation seems to be occurring elsewhere in global health policy. For instance, a recent US President’s Emergency Plan for AIDS Relief (PEPFAR) gender strategy outlines key affected populations that its funding will focus on including “LGBT populations” yet only highlights HIV prevention interventions for MSM and transgender persons. Similarly, the European Commission Regional HIV/AIDS Helpdesk’s assessment on HIV prevention gaps in South Africa included a section titled LGBTI that only highlighted data on HIV prevalence among MSM and explicitly conflated terminology in their recommendation to “increase financial resources and/or technical support for organizations that provide health service specifically to LGBTI, as many MSM feel more comfortable using services specifically targeting MSM.”

This conflation results in invisibilization and is a central reality that has lost prominence within SANAC discourses over time. Some informants reflected it was perhaps premature for WSW advocates to join the LGBTI sector as it has led to deprivation of attention to their concerns. WSW are not the only group within the LGBTI sector that has missed out. The health needs of transgender and intersex persons have been overlooked in SANAC processes and programs elsewhere. For instance, an informant that noted a transgender community organization took independent actions to influence the 2012-2016 NSP’s drafting team lest their issues be forgotten. The findings reveal that MSM succeeded in gaining attention within SANAC processes, and several organizations in the LGBTI sector received funded intervention to target that population. The evidence base on MSM vulnerability to HIV and STIs, grounded in data collected globally over three decades of the HIV pandemic, provided a strong platform for reflecting on what could be done for the population within the South African context. Global consensus around the need to target key populations spurred the efforts of South African public health actors and major global health funding partners, including the Global Fund and PEPFAR, to enhance their ability to dedicate funding for interventions for MSM and other key populations. For example, PEPFAR’s Partnership Agreement with South Africa identifies the need to enhance funding to address the epidemic of MSM vulnerability to HIV and STIs.

The opportunity cost is that the sector has been unable to serve as an effective space to advocate for the strategic interests and unmet health needs of WSW and others that are underrepresented within the LGBTI sector. The SANAC LGBTI sector is missing opportunities to consider the health needs of all the populations under its mandate and to represent those populations’ strategic interests to the South African government and its development partners. Some informants expressed a sense of resignation that the SANAC LGBTI sector would not be in a position to prioritize WSW sexual health agendas in the future. While solidarity in confronting homophobia and enshrining sexual rights in law was the basis for South Africa gay men and lesbians to collaborate in the past, the disparate contexts of MSM and WSW vulnerabilities to HIV and STIs may mean that their needs might be better addressed through different sectors.

Thus, advocates for WSW may need to reposition the issue of WSW public health within the context of South Africa’s public health system. They should continue to call for HIV and STI prevention programming for WSW in South Africa that addresses risks among WSW, and insist on the inclusion of interventions to improve their sexual health within South Africa’s public health system.

Conclusion

Efforts to address the sexual health needs of WSW require a reevaluation of the power of male-dominated culture and institutions including public health orthodoxy, which do not recognize the possibility of STI and HIV transmission risks among WSW. Such contestation is unlikely to be expressed by vested interests, such as conservative members of the SANAC women’s sector, particularly those aligned to the ANC under Jacob Zuma’s leadership. If the prediction that the SANAC LGBTI sector will not be able to prioritize WSW concerns is correct, then advocates for WSW’s unrealized health rights need to identify other allies within SANAC and may have to seek other policy spaces to make their case to government for a response to WSW sexual health and personal safety.

In the next phase of NSP development, policy entrepreneurs need to reiterate the human rights arguments around the multiple vulnerabilities that WSW face in the context of HIV/AIDS. Reviews of the 2012-2016 NSF should afford an opportunity for advocates to reassert the vulnerability of women in all their diversity, reposition the available data on the burden of HIV and STIs among WSW, and insist on the inclusion of interventions to improve their sexual health within South Africa’s public health system.

who are relatively disempowered within South African society. The political aspects of sexuality were examined by Gayle Rubin, who argued that many societies “appraise sex acts according to a hierarchical system of sexual value.” Marital, reproductive heterosexuals became alone at the top of the “erotic pyramid . . . as sexual behaviors . . . fall lower on the scale, the individuals who practice them are subjected to a presumption of mental illness, disrespectfulness, criminalization, restricted social and physical mobility, loss of institutional support, and economic sanctions.” The reason why LGBTI people’s human rights, including their health rights, have often been denied is that they reside lower down the scale of such an “erotic pyramid” and thus hold less power.

The framers of South Africa’s Constitution intended to end discrimination on the basis of sexuality, but homophobia and violent views have persisted. For example, a general population survey showed that 80 percent of adults feel that same-sex behavior is “always wrong.” MSM may seem to hold greater authority within SANAC than other powerless groups represented by the LGBTI sector, but the findings show that the influence that advocates for MSM have wielded correlates directly to the prominence public health actors have accorded to the evidence of the HIV risks experienced by MSM.

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FELICITY DALY began working on the response to HIV/AIDS in New York City in the early 1990s. She graduated from the City College of New York with a BA in international studies before studying and working on gender and development initiatives. She attended the London School of Economics on a scholarship and earned a master of science in economic and development initiatives. She attended the London School of Economics and is a synthesis of some findings emerging from the health policy analysis approach of her DrPH thesis research. Daly was recently appointed as executive director of the Kaleidoscope Trust, which was founded in 2011 to urge policy actors in the UK and Commonwealth, and elsewhere to use their power and influence to support the rights of LGBT people worldwide.

14 Eileen Rich, Levels of Empowerment Among LGBT People in the Western Cape, South Africa, Triangle Project and University of South Africa Center for Applied Psychology, 2006.

ENDNOTES

21 Sandfort et al., “Forced Sexual Experiences.”
27 Ibid., 39.
Removing Barriers to Legal Transition: An Examination of Identification Documentation Policy and Transgender Individuals

By Jonah DeChants

ABSTRACT

Many transgender people are vulnerable to harassment, discrimination, and violence because they do not have access to identification documents that affirm their gender identity. The policies governing the change of gender markers on identification documents are varied and frequently rely on the opinion of a medical professional rather than the experiences of transgender people. This article will explore the historical context of gender marker policies, discuss the benefits and challenges of existing policies, and offer perspectives on best practices for future policy work and advocacy.

Introduction

Presenting identification documentation, such as a driver's license or passport, has become an everyday activity for most Americans. We present them in a variety of contexts, from boarding a plane to ordering a beer. But what if your driver's license had the wrong gender marker on it? Your body, your mannerisms, and your sense of self may all be female, but your license is marked with an “M” for male. Would this make you less likely to present your driver's license at the local bar? For many transgender people, this awkward situation is a daily reality. Thanks to a collection of confusing and onerous policies at various document-issuing agencies across the United States, there are significant financial, medical, and legal barriers to updating one’s identification documents to affirm their gender identity. The policies governing the change of gender markers on identification documents are varied and frequently rely on the opinion of a medical professional rather than the experiences of transgender people. This article will explore the historical context of gender marker policies, discuss the benefits and challenges of existing policies, and offer perspectives on best practices for future policy work and advocacy.

Removing Barriers to Legal Transition

Legal transition is the process by which a transgender person changes their name and gender marker on a number of national, state, and institutional documents (e.g., passports, driver's licenses, college IDs). This article exclusively discusses policies and procedures for changing the gender marker, due to the fact that legal name change is an issue that includes situations beyond gender transition. Not all transgender people choose to legally transition and update the gender marker on their documents. However, those who do face different procedures, requirements, and costs for each document they change. Some document-issuing institutions in the United States require medical procedures such as sex reassignment surgery or gender counseling. Others require court orders or legal fees.

While some transgender people may choose not to legally transition, many others are prevented from doing so by the financial cost or the medical requirement. Many transgender people, who already face significant discrimination in housing and employment, do not have the resources to hire a lawyer or purchase a new passport. Others may not have access to gender-affirming health care and may not have the ability to, or interest in, complying with requirements for doctors' letters or proof of surgery. Many transgender people choose not to pursue medical treatments as part of their transition and are therefore automatically barred from changing their legal gender. In 2011, the National Transgender Discrimination Survey found that only 21 percent of transgender people have changed all of their identification documents and 33 percent have not changed any.

In 2012, Jody L. Herman of the Williams Institute estimated that as many as 183,000 transgender Americans do not have updated driver’s licenses and 124,000 have
The widespread use of identification documents is a relatively recent phenomenon in American history. Originally, birth certificates were only necessary for the purpose of determining inheritance. It was not until the early twentieth century that a majority of births were actually recorded. With the creation of Social Security benefits in 1935, the necessity of establishing inheritance was extended to all classes and the federal government began to standardize and coordinate the states’ efforts to issue birth certificates. Today, birth certificates are used to prove one’s eligibility for a variety of entitlements and services, including insurance, public education, and pensions. 

Massachusetts was the first state to issue driver’s licenses in 1917. The use of the license as a form of identification spread so rapidly that by 1977, forty states had started issuing drivers licenses to women who still needed a form of identification for other purposes, such as transportation or buying certain products. With 86 percent of women recently holding driver’s licenses, they are now the most ubiquitous form of identification in the day-to-day lives of most Americans.

These days, we are accustomed to presenting identification when we leave our homes to shop, work, or travel. We use them in a variety of settings, including airports, restaurants, drug stores, and office buildings. Additionally, advances in technology and concerns about national security have led to more government legislation on how identification can be issued and when it is required. Examples of this legislation include the Help America Vote Act of 2002, which mandated a photo identification requirement for voting, and the Real ID Act, which requires federal verification of state-issued IDs. In addition, the Obama administration has called for the creation of a national ID card, a document that would be held alongside a social security number as a way to verify one’s identity.

Current policies for changing one’s gender marker are the legacy of preexisting policies and court rulings on the nature of legal gender. State and local institutions were unprepared in the 1960s and 1970s as transgender (or “transsexual” as they were then and are still sometimes called) people began to petition the courts to change their legal gender. In 1965, a transgender woman petitioned the New York Board of Health to change the gender marker on her birth certificate. However, the Health Code explicitly stated that a certificate could only be changed if “the Commissioner or his designee is satisfied [that] the evidence submitted shows the true facts and that an error was made at the time of preparing and filing the birth certificate.” The woman’s petition was therefore denied, since she could not prove that the gender on her birth certificate was the result of a clerical error. The first comparable court ruling on changing one’s legal gender took place in England in 1970 when a man filed a declaration that his marriage to a transgender woman was null because she was still legally a man. In Corbett v. Corbett, the court determined that the transgender woman’s gender, chromosones, and genitalia at birth were the determining factor in deciding her legal gender. Furthermore, the court stated that one’s sex was assigned at birth and could not be changed except in case of error. The Corbett v. Corbett ruling set a precedent for similar judgments in Canada and the United States.

These rulings display how state and legal institutions did not perceive transgender people’s desire to change their gender as a problem, or even as a possibility. They operated under the assumption that gender is an immutable characteristic and that, unlike hair color or weight, it will not change over the course of one’s lifetime. Additionally, the rulings prioritized the medical gender criteria over personal self-identification. This emphasis on medical examinations as part of determining one’s “correct” gender has played a critical role in determining when and how transgender people can change their legal gender.

Current Obstacles

One of the first federal measures to address transgender issues was the 1977 Model Prison Standards Act. This act, which was adopted by many state correctional facilities, established medical transition as a means to address transgender needs in prison. The act established a set of requirements that facilities must meet in order to provide medical care for transgender inmates. These requirements include a medical examination, a psychological evaluation, and the creation of a medical plan. The goal of these requirements is to provide medical care for transgender people in a manner that is consistent with best practices in the field.
changing one’s legal gender?

In addition to eliminating the role of medical professionals, the Argentine law also highlights differences in how legal documentation is administered in Argentina and the United States. The key difference is the existence of Argentina’s National Bureau of Vital Statistics, a centralized institution that has the authority to change both the gender marker on identification cards and birth certificates. 26 In the United States, there is no such central institution and the federal government does not have the authority to dictate documentation policies to the states, each of which issues birth certificates and driver’s licenses according to its own regulations. 27 Because of the nature of the Argentine governmental structures, the implementation of this new policy is not likely to pose too large of a burden on their existing document-issuing organizations and will not conflict with local or provincial policies. A similar national-level policy would not have the same simple effect in the United States.

The Pennsylvania Department of Transportation: Genderless Identification

In the midst of a close election and controversial voter ID legislation, the Pennsylvania Department of Transportation made a largely overlooked but nevertheless radical policy change in the fall of 2012: they began issuing driver’s licenses on which no gender marker was present. 28 While this was the first of its kind, David Rosenblum of the Philadelphia-based Mazzoni Center stated, “I know this is the first time the state has ever issued an ID where gender doesn’t matter.” 29 Despite this, the policy change went largely unnoticed by the mainstream media and the general public. The effort was deliberate, however, because the Pennsylvania Supreme Court struck down the state’s voter ID law in January 2014. 30 Without the urgency of the voter ID law, the Pennsylvania Department of Transportation has returned to issuing only driver’s license and photo identifications, both of which have gender markers.

The strength of this policy solution is its radical simplicity; it elegantly sidesteps the entire problem of updating a gender marker. If identification documents have no gender, then there is no way for transgender people to have gender-incongruent identification. This solution is comprehensive; it accommodates transgender people who do not seek medical treatment, as well as those who do not feel like the categories of “male” and “female” accurately describe their gender. The policy solution also raises an interesting question: for several decades we have included gender on these documents because it helped us distinguish people, but is this still relevant in a world of digital technology?

The simplicity of this policy solution and the questions it provokes are also its greatest weaknesses. It may be politically unrealistic to make such a profound change. It is easy to imagine politicians, voters, and policy makers objecting to such a radical departure from the long-standing tradition of including a person’s gender on identification documents. Opponents could argue the removal of gender markers would lead to an increase in fraud or a decrease in fraud, as there would be no indicator of documents at identifying their holders. The deletion of gender markers may also require expensive changes to equipment or bureaucratic paperwork and stretch the capacity of document-issuing organizations. It also has the potential to place these organizations in conflict with one another. If federal documents discontinue the use of gender markers but state documents maintain it, there could be clerical or computational errors when verifying identity in a national database. Ultimately, the deletion of the gender marker on identification documents is conceptually simple but difficult to put into practice.

The US Department of State: Legal Transition with a Medical Letter

On 9 June 2010, the US Department of State officially changed its policies regarding gender changes on US passports. 31 Applicants who wish to change the gender marker on their passport must now present a letter from a licensed physician stating that they have undergone, or are undergoing, medical transition. 32 This policy was celebrated as a large step forward by transgender advocates, largely because it allows people to change their documents during their medical transition and because it does not explicitly require sex reassignment surgery. However, setting a standard of change is its pragmatism. Instead of mandating which medical procedure or what kind of medical professional qualifies for legal transition, it sets an ambiguous low standard. This ambiguity allows transgender people and their health care providers the opportunity to determine which procedures are best for them and their transition. However, this policy continues to value the opinions of medical professionals more than the experiences and desires of the transgender person. The doctor or surgeon effectively acts as a gatekeeper, deciding who does or does not qualify for transition. Low-income transgender people who do not have access to medical care and transgender people who do not seek medical care for their transition are not able to legally transition under the new passport policy.

Nonetheless, the US Department of State’s passport policy is the most pragmatic policy solution in our current political and cultural climate. The fact that it requires a low level of medical proof means that most transgender people who medically transition will be able to update their passports. It also appeases those who may be resistant to making legal transition “too easy,” ultimately leaving the decision up to a medical professional. By retaining the medical requirement, it is not too much of a drastic departure from existing policies, and its simple design allows the existing passport application structures to be only slightly modified, not overly taxing the existing procedures and organizational capacity. Overall, while the use of medical transition as a means test but lower the bar. By including more professional opinions, an expanded policy would ultimately increase the strength of this policy change is its pragmatism. The gender marker policy of the US Department of State is a more pragmatic and feasible solution. It maintains the role of the medical gatekeeper, therefore silencing critics who believe that people may change their gender marker to escape debt or criminal convictions. By not mandating any particular medical treatment or surgery, it allows the strength of the case presented by transgender people to decide what is best for them. This policy could be improved if the definition of “medical professional” were expanded to include a counselor or social worker. These professionals are included in the policy to change one’s gender marker on a driver’s license in Pennsylvania. 33 A visit to a counselor or social worker requires less time and fewer resources than pursuing hormone or surgical treatment. It would effectively keep the medical professionals out of the paperwork or computer systems. Such costs could be mitigated by a gradual rollout of new documents, rather than inverting lots of resources in a sudden shift. Ultimately, removing gender markers would remove another locus of government control over transgender people and their lives. Current criteria for changing one’s gender marker on various identification documents are divergent and burdensome. They prevent transgender people from having accurate documentation and expose them to discrimination, harassment, and violence. Eliminating gender markers would reduce the number of hoops that transgender people must jump through in order to acquire accurate documents and reduce their risk of harassment.

It may be many years before we see genderless identification documents. Each document-issuing agency—whether at the federal, state, or local level—has jurisdiction over its own processes. Therefore, it may take many years before we see genderless identification documents. Transgender advocates and allies are already working hard with these agencies to communicate the needs and concerns of transgender people. Their successes, such as New York State’s recent decision to eliminate the surgical requirement to change a birth certificate, will ultimately exert pressure on other organizations to advocate for better policies and the eventual elimination of gender markers.

Adopting a policy similar to the law in Argentina would be a large improvement over most policies in the United States. This policy would allow all transgender people, regardless of their ability or desire to pursue medical transition, to update their gender markers without any sort of gatekeeping by medical personnel. Argentina’s existing policy could even be improved upon if it allowed the recognition of more gender identities beyond “female” and "male." However, given the current political and cultural climate in the United States, where transgender people are accused of committing fraud or asking for special privileges, this kind of radical policy change is unlikely to occur.

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Policy Recommendation

Adopting a policy similar to the law in Argentina would be a large improvement over most policies in the United States. This policy would allow all transgender people, regardless of their ability or desire to pursue medical transition, to update their gender markers without any sort of gatekeeping by medical personnel. Argentinian’s existing policy could even be improved upon if it allowed the recognition of more gender identities beyond “female” and "male." However, given the current political and cultural climate in the United States, where transgender people are accused of committing fraud or asking for special privileges, this kind of radical policy change is unlikely to occur.

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This policy is not a perfect solution. It does not displace the need for legal transition: many transgender people would still need to update the name and photo on their various documents. Modifying the structure of these identification documents would also be a significant undertaking—it would require expensive changes to paperwork or computer systems. Such costs could be mitigated by a gradual rollout of new documents, rather than inverting lots of resources in a sudden shift. Ultimately, removing gender markers would remove another locus of government control over transgender people and their lives. Current criteria for changing one’s gender marker on various identification documents are divergent and burdensome. They prevent transgender people from having accurate documentation and expose them to discrimination, harassment, and violence. Eliminating gender markers would reduce the number of hoops that transgender people must jump through in order to acquire accurate documents and reduce their risk of harassment.

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Conclusion

Transgender people face a number of obstacles to changing their legal gender, including confusing, and sometimes contradictory, variations in policy and medical procedures used as a means test. These barriers are unnecessary, inefficient, and the result of outdated understandings of gender. The deletion of gender markers from identification documents would significantly reduce these barriers. It would free transgender people from the burden of consulting with a medical professional about their identity and legal status. It would be inclusive of gender identities that are outside the gender binary. This deletion, in conjunction with streamlined procedures for legal name change, would give transgender people access to the documents they need to live their lives free from discrimination, harassment, and violence. Until gender markers are eliminated, we must continue to advocate for identification-issuing agencies to make their gender marker policies more accommodating to transgender people for their civil rights, their dignity, and their safety. These policies, along with other much-needed policies regarding nondiscrimination in employment, housing, and medical care, can contribute to transgender people being able to live their lives authentically and safely.

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Corrective Rape in South Africa: Cultural Issues and Policy Solutions

By Charles Fletcher

ABSTRACT

This article reviews the cultural and legal issues of corrective rape of lesbian women in South Africa and proposes policy solutions to ameliorate this social problem. Corrective rape negatively affects lesbians through sexist discrimination and homophobia, but it also impacts gay men and hinders economic growth in the country. A lack of legal protections and improper enforcement keep lesbian women in a precarious state. Despite these issues, the South African government has the tools and resources to create policy interventions such as tailored health services, education, and legal reforms. These policy measures can lead to a safer and more productive environment for lesbian women and other LGBT persons.

Executive Summary

Corrective rape is the rape of lesbian women as a form of homophobic violence, gender-based violence, and conversion therapy to turn them heterosexual. South Africa has a poor record of reported rape and the highest reported rate of corrective rape of any country. The cultural drivers behind these rapes include homophobia and gender discrimination that place lesbian women in a precarious state of double discrimination. However, such rapes also affect gay men in a culture that values heteronormative gender norms. Beyond the individual impacts of corrective rape, the national economy suffers as fewer people are able to contribute to society and instead fall into poverty. Although legal frameworks provide some protections based on sexual orientation, there are many gaps in legislation, enforcement, and public attitudes that result in weaker protections. Despite these issues, the South African government has the resources to ameliorate this problem. The government can engage with national and international organizations to provide more health resources, address cultural education of gender issues, and strengthen the judicial system. Through these efforts, South Africa can serve as an example of human rights through the protection of lesbian and gay rights.

Overview of Corrective Rape

South Africa was regarded as the rape capital of the world in 2011, with someone being raped every seventeen seconds. It was estimated that a woman in South Africa had a greater chance of being raped than learning how to read. Other figures say that a girl born in South Africa has a 50 percent chance of being raped in her lifetime. In 2011, it was estimated that 66 percent of rape victims did not report their attack, many for fear of not being taken seriously. Only 20 percent of reported cases went to court, with 4 percent of those resulting in a conviction. As one survivor stated, “In South Africa there is no safe space for women, there is nowhere you can be safe from rape.”

Such a high prevalence of sexual violence creates significant public health problems. The effects of sexual assault can include posttraumatic stress disorder, depression, suicidal thoughts, antisocial behavior, and physical injury. Such negative consequences disrupt the lives of survivors so that they do not continue with education or employment and subsequently fall into poverty. Since many cases of rape do not involve protection with the use of a condom, there also exists a high prevalence for pregnancy, sexually transmitted infections, and HIV. The risk of HIV transmission is especially dire for South Africa as UNAIDS estimates 19 percent of the population between ages fifteen and forty-nine was living with HIV in 2013.

“Corrective rape” describes rape committed forcefully “cure” and convert a lesbian (or bisexual) woman to heterosexuality. Also known as corrective, reparative, or punitive rape, the term was coined in the early 2000s when charity workers in South Africa began to notice an influx of such attacks. Corrective rape goes beyond a form of sexual assault to include physical, psychological, and sexual harm inflicted on an individual based on his/her sexual orientation or gender expression. Not only does South Africa have the highest reported rate of corrective rape of any country, but reported cases have increased in the last decade. Moreover, some survivors report multiple rapes in their lifetime. One lesbian woman was first raped by a school friend at age fifteen, then later gang raped at age seventeen. “At school I was betrayed by my best friend. He told me to come to his house for a house assignment but when I got to the house...
we fought until he hit me so hard I collapsed, and then he raped me because he said I needed to stop being a lesbian.” However, even the record levels of corrective rape under- state its prevalence in South Africa. In a survey of homophobic hate crime survivors in the Western Cape province, 66 percent of lesbian women stated they did not report their attack for fear of secondary victimization from police, incredible disregarding, exposure of their sexual orientation, or further abuse. As one woman explained, “When a lesbian woman is raped, her family and people in the street say she deserved it and her rapist showed her how to be a woman. It’s easier to keep quiet.” Another woman did not report her rape and succumbed to victim blaming in which she viewed her rape as being her fault: “I blamed myself for the rape. I did not tell anyone, not my family or the friends with me that night.” Carrie Shelve, coordinator for the One in Nine Campaign, describes all rape as a violent attempt to correct behavior. The behavior being corrected can be broad, such as rejecting the sexual advances of a perpetrator or acting outside cultural gender norms. In this way, rape is a matter of dominance and control, using sex as a weapon to put a person in his/her “place.” Corrective rape goes a step further in having sexual orientation as the driving force and justification for rape.

Cultural Issues

Gender inequality in economic, political, and social spheres exacerbates issues surrounding sex and sexuality as women are denned as inferior beings. This power imbalance extends to lesbian, gay, bisexual, and transgender (LGBT) individuals, relegating them to low rungs of social hierarchy for not conforming to traditional gender norms. Based on their identity, lesbian women face double discrimination; they are discriminated and marginalized for being women and further discriminated for being homosex- ual. Additional factors like race, socioeconomic status, or education level compound these conditions. They become more susceptible to sexual violence, particularly when they live in poverty or lack education and access to social and economic resources.

Discrimination against LGBT persons is reinforced by ideas of heteronormativity in South African culture. This idea, dominant in most societies, supports heterosexuality as the norm and prescribes norms and gender roles to each sex (male and female). Women and men who challenge these roles often face discrimination and violence. A shameful record of rape in South Africa in a region of the world where male dominance has fostered an increasingly brutal and oppressive environment in which les- bian women are forced to conform to gender stereotypes or suffer negative consequences. According to interviews with South African men, violent conversion through corrective rape is appropriate since they believe lesbian women just need forced heterosexual sex to be cured. Survivors also report verbal abuse preceding and during corrective rape to “teach a lesson” and show them how to be a “real woman.” This verbal abuse further underscores the prevalence of heteronormativity in South African society and indicates that these crimes are fueled by misogyny and homophobia. Anti-homosexual sentiments stem from strong reli- gious and cultural influences in South African society. Homosexuality is viewed as a “Western concept” that was imported to Africa by White culture. Due to the racial segre- gation and tensions during apartheid, the oppressive view of homosexuality is considered a post-colonial and post-apartheid reaction to the White culture in South Africa. To be homosexual or to support homosexuality is un-African and violently opposed. The male-dominated culture also serves to instill men with a false sense of entitlement and ownership over women. This idea and a culture of rape appear to be passed down to younger generations, thereby continuing the cycle of culturally empowered violence. The 2006 hearing report on school-based violence by the South African Human Rights Commission expressed alarm at the growing phenomenon of corrective rape in schools, with young boys believing that lesbian girls need to be raped to correct their sexual orientation.

More Than Just Women

Contrary to many views, rape and sexual assault are not unidirectional. Both men and women can commit or assist with rape and both can be victims of rape, regardless of their sexual orientation. Unfortunately, even fewer men report suffering rape than women, keeping the issue of male rape silent. Men may not report rape for various reasons including shame, guilt, and stigma; however, many survivors choose not to report because they wish to avoid being viewed as victims, particularly in heteronormative cultures where victimhood is incompatible with ideas of masculinity. Corrective rape therefore serves to feminize and emasculate gay (and bisexual) men through violent means, while rein- forcing the cultural dominance of heteronormativity and gender norms.

A 2003 study conducted by Out LGBT Well-Being and the University of South Africa Centre for Applied Psychology found an equal percentage of male and female survivors who reported having experienced corrective rape. The same concerns about not being taken seriously and the lack of confidence in the criminal justice system are commonplace among male and female survivors. Bisexual and transgender women and transgender individuals also suffer gender-based violence, with the latter frequently suffering higher rates. In addressing corrective rape, it is therefore important to address all victims, regardless of sex, since the motivation remains the same: “teaching” those who deviate from society’s patriarchal norm a lesson.”

Economic Issues

International development agencies including the World Bank and ActionAid are committed to eradicating global poverty through economic development, and view gender equality and the rights of women as necessary compo- nents to realize this goal. However, violence against women is linked to gender inequity and omitting sexual orientation from the definitions of women’s rights. The impacts of sexual violence impede women from education, employment, and contributing to society, resulting in an economic loss for the survivors and the nation as a whole as fewer women and men work. Corrective rape and other forms of homophobia pose an economic cost to South Africa as well. A preliminary World Bank study of the economic costs of homophobia and the exclusion of LGBT people in India found that such discrimination could result in a loss up to 1.7 percent of gross domestic product (GDP). While the results of this study are still being reviewed and the case applies to India rather than South Africa, there is no doubt that LGBT discrimination leads to lost economic output and hinders overall economic development. Corrective rape survivors who are unable to receive proper treatment and recovery may not be able to continue their education or find employment. They may subsequently fall into a vicious cycle of poverty and more violence.

Legal Issues

Human rights violations targeted at people because of their sexual orientation are a global epidemic; these include hate crimes, sexual assault, rape, torture, and murder, as well as various forms of discrimination such as the denial of employ- ment, education, and other basic rights. Although some countries in South Africa legislation provides rights and protections based on sexual orientation, the aggression against lesbian women and gay men is a clear illustration of the gap between legislative ideals and the cultural attitudes of the public.

The South African Constitution is considered very progressive, pledging equality for all citizens and protection from discrimination in the grounds of gender, race, and sexual orientation. Section 9 of the Bill of Rights specifically prohibits discrimination against people on the basis of their sexual orientation, the aggression against lesbian women and gay men is a clear illustration of the gap between legislative ideals and the cultural attitudes of the public.

The National Human Rights Commission has called upon the South African government to take more action and develop more effective solutions in the criminal justice system to protect the human rights and dignity of survivors, particularly in holding perpetrators responsible for their crimes. The government formed a task force in 2011 to develop a legislative plan and public awareness strategies to address corrective rape. However, progress has been slow and corrective rape has still not been classified as a hate crime. Without this classification, survivors and activists must rely on existing legislation and judicial precedent, which have not favored women for survivors. The Bill of Rights now requires reporting and a speedy legal system. However, Judge Thalethwa Maumela set a precedent in a recent court decision in the High Court sitting at the Palm Ridge Magistrate’s Court by sentencing a man to a term in prison after acquitting him of the rape and murder of a young lesbian woman. Judge Maumela reported that the ruling was his effort to uphold the law and make a difference in addressing these issues by setting an example of how to address hate crimes. He stated, “No one has been given the right to correct others when it was previously listed under “harassment.” However, Article 8 on the pro- hibition of unfair discrimination on the grounds of gender is the first form of discrimina- tion. Lesbian women may be closely protected against gender-based violence under the act, but a weakness of the legislature is not clarifying what constitutes gender-based violence and omitting sexual orientation altogether beyond the initial definitions of “harassment.”

Simply listing rights and providing protection through legislation does not guarantee that the laws match reality. In 2012, South Africa was reported to have one of the highest rates of violence in the world, with more than forty murders a day on average, and the highest rate of rape. Women still experience gender-based violence even through such transgressions are explicitly prohibited by law. The double discrimination suffered by lesbian women through both the violence against women and LGBT discrimination and vio- lence makes a mockery of the constitution and puts millions of women’s safety at risk. Clare Carter’s research with lesbian women and local nongovernmental organizations (NGOs) in South Africa also revealed issues with the criminal court system. Many rape cases sent to the criminal court system take up to six years to be heard, and even then it is very difficult to receive a conviction. Furthermore, despite constitutional protections, many citizens do not know their rights or cannot afford court fees.

Organizations such as the Eastern Cape Gay and Lesbian Association (ECGLA) and the International Gay and Lesbian Human Rights Commission (IGLHRC) have petitioned for high sentences for corrective rape and to have it defined as a hate crime. The South African Human Rights Commission, however, has not been successful in taking any action to make a difference in addressing these issues. The Western Cape High Court, in 2011, set a precedent in the High Court sitting at the Palm Ridge Magistrate’s Court by sentencing a man to a term in prison after acquitting him of the rape and murder of a young lesbian woman. Judge Maumela stated that the ruling was his effort to uphold the law and make a difference in addressing these issues by setting an example of how to address hate crimes. He stated, “No one has been given the right to correct others when it was previously listed under “harassment.” However, Article 8 on the pro-
comes to the right to love their own gender.” Although the thirty-year sentence has been criticized for being too lenient for the crime by some South African activists, they are pleased to see judicial action that recognizes the motivation of hate in corrective rape crimes.

Policy Solutions

South Africa has the opportunity to become a judicial and social leader in Africa by protecting the civil rights of all its citizens, particularly LGBT citizens. Addressing corrective rape as an intersection of women’s rights and LGBT rights through policy interventions can serve a larger purpose in supporting human rights in South Africa. The 2009 ActionAid report on corrective rape outlined specific actions for the South African government to take against corrective rape, but five years later, it seems that little progress has been made. Rather than simply checking a box on a list of policy actions, the South African government must commit itself to better serving survivors, supporting education as a form of prevention, strengthening the legal protection of sexual orientation, and prosecuting perpetrators to give force to the law. Luckily, the South African government has the resources and can engage with civil society and international organizations such as ECGLA, IGLHRC, and UNAIDS to combat corrective rape.

The unique homophobic motivation behind corrective rape necessitates tailored services for survivors beyond standard survivor services. In investigating male rape in conflict, researcher Charli Carpenter found a lack of support services for men and suggested culturally appropriate medical assistance and psychological support. Such services address the unique issues and differences of male survivors that are not served by traditional services for women. Similarly, the Department of Health must ensure that proper medical and psychological services are available to all survivors of corrective rape, male or female. Recognizing the sexual orientation and gender identity elements of a survivor’s recovery is essential to provide appropriate medical, psychological, and social services. Sexuality-sensitive services can help survivors recover and lead productive lives for themselves and the larger South African society.

Including HIV treatment is also essential in these services. Although the South African public health system provides HIV prophylaxis free of charge to rape survivors who report their rape, this information needs to be more widely disseminated so all survivors know. Furthermore, the access to postexposure prophylaxis and services available to rape survivors needs to ensure confidentiality so survivors don’t fear secondary victimization in seeking treatment. Partnering with existing organizations such as the South African National AIDS Council and UNAIDS can utilize current HIV programs to educate on corrective rape and support all survivors of sexual assault. Small steps can have a large impact to help survivors of corrective rape and combat HIV.

As corrective rape is a cultural problem, it requires a cultural solution. The South African Human Rights Commission report on the rising number of young boys and men learning to commit violence against girls is a red flag that intervention is needed to end the spread of gender-based violence in the next generation. Working with the South African Human Rights Commission and other local NGOs, the Department of Education must ensure that students are being educated on their rights through civics studies, as well as gender studies. Discussions on these topics are imperative for students to know their rights and respect the rights of others. Cultural change is not quick though, and the result may take several years or generations, but education and awareness are necessary to begin the change.

Finally, legal reforms and executive implementation are required to tie everything together. The Equality Act should be amended to explicitly include sexual orientation in the list of protections. Adding corrective rape as a hate crime will create specific penalties leading to more effective punishment and deterrence of future perpetrators. Laws also need to be properly and universally enforced across South Africa. The government task force must continue to act as a platform to review and address corrective rape as policy changes are implemented. Citizens have called upon the government to act and the government has a responsibility to respond by sending a clear message that such crimes will not be tolerated.

Conclusion

South Africa stands at a crossroads. Corrective rape affects South Africa in nearly every sector, ranging from social and economic to education and public health. With more cases of corrective rape, the economy becomes less productive, the judicial and political systems become weaker with citizens losing faith, and social discrimination and public health concerns become more pervasive. The South African government has the framework in its existing judicial and public health systems to address this problem, and it has the knowledge and support of local and international organizations. Through these efforts, South Africa can champion for human rights, strengthen its judicial system, ensure a more educated and healthy population, and increase economic growth as more lesbian women and gay men are able to contribute to the economy. Acting now will move the country forward on the right path to equality and the eradication of gender-based injustice.

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School-Based Services for LGBTQ Youth

By Jessie Kenmer

ABSTRACT

There is limited empirical evidence of school-based practices and anti-bullying policies intended to serve LGBTQ youth, despite indications that such interventions are beneficial to the entire school community. Implications for practice are discussed.

Introduction

Experiences of victimization for LGBTQ youth occur across various settings, including the home, school, and community. Research has established the association between identifying as LGBTQ and increased victimization amongst youth. Identifying as LGBTQ is also associated with risk of substance and alcohol use, sexual risk behaviors, school problems, and suicidality amongst youth. It is a reasonable assumption that some of these outcomes are a result of the victimization LGBTQ youth experience. The 2011 National School Climate Survey conducted by the Gay, Lesbian, and Straight Education Network (GLSEN) found that 84.9 percent of the 8,584 student respondents heard “gay” used in a negative way frequently or often at school, and 91.4 percent of students felt distressed because of this language.

Tamera Murdock and Megan Bolch identified peer victimization as one of the strongest predictors of school disengagement for LGBTQ youth, providing a foundation for the development of depression and anxiety. LGBTQ youth report experiences of harassment, discrimination, and social exclusion, often specifically related to their sexual orientation, gender identity, or expression. Huda Ayyash-Abdo demonstrated that a hostile school environment can lead to emotional distress, depression, anxiety, and suicidal ideation.

A likely setting for victimization, schools are a practical setting for intervention, yet there is limited empirical evidence of successful LGBTQ school-based initiatives. Good schools positively shape culture and foster healthy behaviors, relationships, and social responsibility amongst students, regardless of sexual orientation. This article will review statutory policies, “no promo homo” legislation, and anti-bullying legislative action surrounding school-based support for LGBTQ students. Implications for practice and research are discussed within the context of successful interventions and support services implemented across the nation, such as: Project 10, the Safe Schools Program for Gay and Lesbian Students, and the Gay Straight Alliance (GSA) Network. Recommendations for research and practice are discussed.

State Policies

As of 2010, forty-four states explicitly prohibit bullying and harassment in schools. However, while some schools have anti-bullying policies with protections based on sexual orientation, gender identity, and expression, others simply promote general efforts for which such protections against bullying and harassment apply. These vague policies exclude personal characteristics for which various groups are protected from discrimination. In sum, the United States remains divided regarding school systems’ curricular policies and educational codes.

“No Promo Homo” Legislation

Some policy development has worked against protecting LGBTQ youth through explicitly or implicitly prohibiting teachers from discussing LGBTQ-related topics, creating confusion amongst staff and students in addressing bullying and violence directed toward LGBTQ students. Not surprisingly, some teachers fear losing their job if they intervene in LGBTQ-related harassment issues.

In eight states (Alabama, Arizona, Louisiana, Mississippi, Oklahoma, South Carolina, Texas, and Utah), school districts and state governments have adopted “no promo homo” policies. The most extreme of these policies only allow for classroom discussion of LGBTQ individuals if portrayed as immoral, unholy, or disease-prone. While some state policies strictly prohibit LGBTQ-related topics (e.g., Louisiana and South Carolina), others require teachers to actively condemn homosexual practices (e.g., Texas). Failure to comply with such policies can result in termination of a teacher’s position within the school system. “No promo homo” legislation often results in negative consequences. In the Minnesota school district of...
Amika Hennepin, a “no promo homo” policy was over- turned in 2012, after it was said to be influential in the suicide of eight students after being relentlessly bullied and harassed due to their real and perceived sexual orientation and gender identity. An additional seven students were hospitalized for attempted suicide.31

Anti-Bullying Legislation Protection Based on Sexual Orientation

In contrast to “no promo homo” legislation, some states have laws that protect LGBTQ youth. In an analysis of anti-gay bullying in schools, Jason Wallace documented comprehensive anti-bullying legislation specific to sexual orientation in Illinois, Iowa, Maryland, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Vermont, and Washington.21 These illustrative statutes specify sexual orientation and gender identity as characteristics upon which students shall not be harassed and have been shown to be associated with a reduced preva- lence of suicide attempts among LGB youth.29 Regardless of sexual orientation, LGBTQ-inclusive laws protect students from anti-gay verbal harassment. These policies can provide impetus for other school-based interventions, enabling educators to serve as advocates for LGBTQ youth and ensuring a safe and successful school environment.

School-Based Interventions

Individual Level

School staff members have an ethical obligation to pro- vide a safe environment for all students. For this to occur, Sanna Thompson and Lon Johnston challenge practitioners to provide a school environment that fosters a sense of connectedness and safety amongst all students.26 For this to occur, Individual Level interventions involve ensuring a safe and successful school environment.30

School-based interventions for LGBTQ students in the literature: presence of a gay-straight alliance (GSA), supportive educators, inclusive curriculum, and a comprehensive anti-bullying or harassment policy.

Gay-Straight Alliance

School-based student-led support groups, such as GSAs, aim to guide systemic change in school culture and increase respect for diversity, supporting LGBTQ students and their heterosexual allies and reducing prejudice, dis- crimination, and harassment.30 In 2015, more than 4,000 groups existed within US middle schools, high schools, and colleges.31 GSAs disseminate information about LGBTQ-relevant topics (e.g., coming out, connecting with supportive faculty/staff, developing coping strategies for living in a hostile climate) and improve interpersonal relationships,32 sponsor social events, and initiate change in schools that enhance understanding of sexual orientation, reducing stigma, prejudice, and hostility.33

A large statewide survey of high school–age students across sixty-four public schools revealed that the presence of a GSA or other support group for LGBTQ students was significantly associated with reduced victimization.33 In 2011, GLEN discovered that less than two out of ten students were taught positive representations of LGBTQ individuals, history, or events in their classes.34 From a school-climate perspective, LGBTQ-related content has been shown to aid in the personal growth and well-being of gay and gender noncon- forming students, while also fostering a collaborative and safe environment.35

Comprehensive Anti-Bullying Policies

School climates may benefit from effectively commu- nicate comprehensive anti-bullying policies.36 Despite an insignificant relationship between comprehensive anti-bullying policies and victimization, GPA, or truancy, these policies were significantly related to positive feelings of self-esteem.37 Kosciw et al. reasoned that schools with bullying policies in their classes.58 From a school-climate perspective, the presence of a GSA or other support group for LGBTQ students was significantly associated with reduced victimization.33 In 2011, GLEN discovered that less than two out of ten students were taught positive representations of LGBTQ individuals, history, or events in their classes.34 From a school-climate perspective, GSAs have been shown to aid in the personal growth and well-being of gay and gender noncon- forming students, while also fostering a collaborative and safe environment.35

Application: State and Nationwide School-Based LGBTQ-Affirmative Interventions

California and Massachusetts have led the United States in efforts on behalf of LGBTQ youth.39 In the 1980s, the Los Angeles Unified School District initiated Project 10; the Safe Schools Program for Gay and Lesbian Students was established by the Massachusetts Board of Education in 1993. GLSEN was established in 1995, through the work of Headway Gay and Lesbian Educators and the Gay- Straight Alliance Network (GSA Network) was established in San Francisco in 1998.40 While a comprehensive review of model programs throughout the United States and scope of this article, several noteworthy programs are briefly summarized.

Project 10

Project 10 originated as a dropout prevention program for LGBTQ students at Fairfax High School in the Los Angeles Unified School District.41 With a central location in the district for resources on LGBTQ issues, Project 10 provides ongoing workshops to train counselors, teachers, and staff on issues of institutional homophobia and the needs of LGBTQ youth while also collecting on-site team for student support. These team members also provide assistance to school librarians in building collections of fiction and nonfiction LGBTQ subjects. Project 10 relies on the development and enforcement of nondiscrimination clauses, anti-drug resolutions, or codes of behavior with regards to name calling, advocacy for LGBTQ student rights through commissions, task forces, professional development, and networking with community agencies, parents, educational organizations, and teachers’ unions.42 The nation’s first public school program dedicated to providing on-site educational support services to LGBTQ youth.43 Project 10 may be modified to address the needs and goals of specific schools or districts.

The Safe Schools Program for Gay and Lesbian Students (SSP)

With origins in Massachusetts, the SSP has offered services designed to help schools implement state laws impacting LGBTQ students since 1994.44 The SSP’s mis- sion is to develop school policies protecting gay and lesbian students from harassment, violence, and discrimination; provide training to school personnel in crisis and suicide interventions; establish school-based support groups (e.g., GSAs); and provide school-based counseling for family members of LGBTQ students.45

GSN Network

Founded in 1998 in the San Francisco Bay Area, the Gay-Straight Alliance Network (GSA Network) is a national youth leadership network that facilitates communication between GSAs across the nation.46 The GSA Network’s mission is to create safe and support- 68 // LGBTQ POLICY JOURNAL VOLUME V // 69

friendly environments that celebrate diversity, homophobia, transphobia, and other forms of oppression as well as gender identity and sexual orientation issues, and
to fight discrimination, harassment, and violence. The GSA Network has expanded from forty to more than nine hundred clubs, with GSAs in 61 percent of all California public high schools and a growing number of middle schools, serving over 30,000 student members. The GSA Network has also launched the National Association of GSA Networks in order to unite statewide organizations supporting GSAs and accelerate the GSA movement.

Recommendations

There are few empirical evaluations of efforts to improve the school environment for LGBTQ youth. Future research should evaluate the effect of interventions on LGBTQ youth and investigate outcomes for students following implementation of professional development. Research establishing the interaction between school climate, victimization, and sexual orientation elicits a need for empirically sound school-based interventions.

GLSEN’s 2011 School Climate Survey found that there has been an increase in GSAs and other supportive student clubs; supportive school staff; positive representations of LGBTQ individuals, history, and events in school curriculum; accessibility of LGBTQ-related Internet resources through school computers; and the presence of school anti-bullying and harassment policies. Despite these improvements, the presence of comprehensive school anti-bullying and harassment policies are few and far between. Although national anti-bullying legislation does not yet exist in the realm of education, the recent repeal of “Don’t Ask, Don’t Tell,” a policy that pre-empted the ability of service members to serve openly in the military, has provided strong evidence that Congress can in fact pass LGBTQ-inclusive policies at a national level. Such legislation can support the establishment of effective school-based prevention and intervention efforts.

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ENDNOTES

17 McGovern, “When Schools Refuse to “Say Gay.””
18 Ibid., 472.
19 Ibid.
20 Ibid.
21 Ibid., 473.
23 Ibid., 753.
26 Ibid., 122-123.
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Exploring the Contradiction of Cooperative Marriage Between Gay Men and Lalas as a Strategy of Practicing Reproductive Rights in Mainland China

By Wong Yuyi

ABSTRACT

As a new form of rainbow kinship and filial solution in the Chinese tongzi (queer) community, cooperative marriage has raised increasing research and media attention in recent years. Debates in the tongzi community also abound. This article explores cooperative marriage by lalas and gay men as a contradicting strategy, specifically focusing on the issue of reproductive rights. The seemingly heterosexual marriage provides a legal guarantee for reproduction, so gay men and lalas who wish to have children may take advantage of such institutional bias. However, from a cultural perspective, almost-compulsory heterosexual marriage and reproduction have exerted even greater pressure on the gay couples, making these marriages vulnerable to social scrutiny and sanctions. Given these stresses, this article calls for anti-discrimination legislation on LGBT people and more inclusive policies of protecting people’s reproductive rights in mainland China.

Cooperative marriage (Xing Shi Hun Yin) refers to a heterosexual marriage entered into by a gay man and a lala. A popular phenomenon in mainland China since a decade ago, more and more gay men and lalas have practiced or intend to experience cooperative marriage. The Chinese tongzi community generally casts doubt on whether such an arrangement offers a solution to the perplexing situation encountered by many Chinese gay men and lalas. Some criticize it as an immoral act of cheating one’s parents and peers, compromising the progress of the LGBT movement in China while having the best of both worlds (enjoying the benefits of a heterosexual married couple while continuing same-sex relationships in secret). Others suggest that Chinese tongzi have little alternative in resolving the conflicts between themselves and the older generation, therefore cooperative marriage is the best and most reasonable strategy. Discussions have extended from the motivations of cooperative marriage to the cultural and sociological analysis of this phenomenon. However, many of the legal and policy aspects have not been explored.

In the context of China’s family planning policy, reproductive rights are mostly fulfilled in the institution of heterosexual marriage. Even though children born out of wedlock are protected by law as stated, in reality they are a minority who cannot get a proper hukou (legal registration) in securing reproductive rights. Therefore, the difficulties for gay people in China to realize their desire to reproduce legally and practically cannot be ignored. On the other hand, the strong social connection between heterosexual marriage and reproduction becomes a major drawback of cooperative marriage. Gay men and lalas with no desire to reproduce have to go under a lot of social pressure due to the stigma attached to the situation. Heterosexual marriage is the only legitimate form of couplesdom, even though proposals for same-sex marriage rights are being filed every year by activists and scholars to the National People’s Congress. For this article, I adopted a practice approach to examine the related issues of reproductive rights in cooperative marriage. Fieldwork included in-depth interviews of twenty gay men and lalas in cooperative marriages, located in five different cities in China (Shenyang, Beijing, Hangzhou, Guangzhou, and Foshan), as well as participant observations and focus group interviews in Guangzhou. Starting from a critical examination of the institutional discrimination of heterosexual marriage and reproductive rights in China, I want to explore the contradictions and difficulties of cooperative marriage as a strategy adopted by gay men and lalas in securing reproductive rights.

All of my interviewees mentioned the legitimacy of childbearing in heterosexual marriage. Besides the legal consideration, my informants emphasized the cultural pressure and stigmatization of raising children in a same-sex household. They also referred to the still-prevalent social discrimination against homosexuality and the lack of social support. Therefore, the difficulties for gay people in China to realize their desire to reproduce legally and practically cannot be ignored. On the other hand, the strong social connection between heterosexual marriage and reproduction becomes a major drawback of cooperative marriage.16 Gay men and lalas with no desire to reproduce have to go...
through series of negotiations and tactical delays, fighting for their reproductive rights to not have children. I will examine cooperative marriage as a major strategy for gay men and lalas who want to have children, as well as gay men and lalas’ lived experiences in negotiating their reproductive responsibilities with their natal and in-law families.

Cooperative Marriage as Parenting

The informants who highlighted their familial responsibility generally plan to have children by cooperative marriage. They consider heterosexual marriage the most appropriate unit for reproduction. I will use the stories of Jun, Dong, and Yang to elaborate on this point.

Jun — Lala, 31, in Family Business (Guangzhou)

Jun’s family is in business. It is typical for children born in this type of family to maintain their business association and showcase their company’s strength by throwing large and luxurious wedding ceremonies. Moreover, getting married and having children are considered important to extend the family line and secure the family property. As Jun told me in our first interview:

I am born as a lala. No matter who I am, I have to bear my family’s responsibility. Although my family is in business, my parents have been pushing me to have children, whether boy or girl, for the sake of inheritance. I’m a single child, which is an important point to consider. Even if I break up with Xin, I will find another baby.

However, I have to have a baby.

Given that Jun’s family was in business, it was difficult for her to remain single. According to Jun, having children was not her genuine desire, but more of a family responsibility. Resorting to cooperative marriage is considered the optimal choice for her since it is difficult for her to imagine marrying a heterosexual man.

Dong — Gay Man, 35, Doctor (Shenyang)

I met Dong in the shared house of four lalas in Shenyang. He came by to see negotiations on issues related to childbearing. At that time, he was the only child in his family and was concerned with the childbearing issue, since extending the family line was considered the duty of male offspring. He explained to me:

Doing cooperative marriage was very clear for both of us, me, and my wife, since we wanted to appear normal as heterosexual people. We wanted to have children, build a family, and live together. It is so very simple.

Dong is not alone. I’ve met many other gay men and lalas who were seeking potential cooperative marriage partners in different occasions, and many said the same thing to me. “Being normal” means one should be married at a suitable age, have children at a suitable age, and so on. Breaking these rules is the least desirable thing for a majority of my informants.

Ying — Lala, 31, Freelance (Suzhou)

Ying was married to a gay man ten years older than her in her hometown Suzhou. A conventional type of heterosexual marriage was not an attractive idea to her once she learned cooperative marriage was an option. She explains:

I had no idea that cooperative marriages actually existed. It was not so popular back then. I came to know about it through my ex-girlfriend. I used to have a boyfriend. I was very conventional, just like my family. I thought I had to get married sooner or later, like a normal heterosexual. I became especially unwilling to marry a straight guy after I became aware of this type of marriage. I kept procrastinating. Later on, I found a website called “Lalas’ Back Garden,” which was so popular that there were a lot of matchmaking posts on it.

Ying was actively negotiating her way of “doing” marriage, but when asked why childrearing was an inscapeable fate for her, she pondered for a moment:

On the issue of childrearing, I often wondered whether I could do something that was extraordi- nary, above the level of other people, so I could be freed from the obligation of having children. After all, for us, marriage is to have offspring. It feels like a “must” thing to do.

For Jun, coming out to her mother did not mean that she was immune from her filial duty in a wealthy family. For Dong, the different single son in the family also put him under great pressure to extend the family line. For Yang, the family ideology was just too strong to fight. With the help of cooperative marriage, those who considered their familial obligation the utmost important thing were granted the legal right to have children.

Negotiating Compulsory Reproductive Responsibilities

On one hand, cooperative marriage provides the lawful right to have children and enables those gay men and lalas who want to have children to take advantage of institutional privilege in China. On the other hand, the close connection between heterosexual marriage and reproductive responsibilities has imposed enormous cultural pressure on those who don’t want to reproduce. Here I will recount Ling’s and Shan’s stories to illustrate this point.

Ling — Lala, 25, in Family Business (Foshan)

Ling married her husband Su at the age of twenty-four in her hometown Foshan. Su is a gay man who works for the government. Unlike other informants with strong familial orientation, Ling resorted to cooperative marriage because she was desperate to leave her natal family. She recounts:

Actually, I wanted to leave my parents’ place not because of my girlfriend, but because I felt so bothered by my parents. They controlled me on everything, where to go for dinner and with whom, and asked me to return home before a certain time at night. What’s more, they kept on introduc- ing men to me. I was so cold to them . . . I’m so much freer after marriage [cooperative marriage]. At least my mum wouldn’t call me every night to check whether I had returned home. Now there are fewer phone calls. I’m so much freer! This is because she thinks that now I’m my husband’s responsi- bility, not hers.

After marriage, Ling moved to Su’s place. A conjugal home provides this gay-lala couple independence from their respective natal families, both physically and emotionally. I met this couple twice, once at their wedding ceremony and once at the 2013 annual LGBTIQ pride parade in Hong Kong. Ling mentioned in her account that Su was like a big sister to her. His idea of taking care of each other when they get old was both very practical and ideal from a cultural point of view:

When we just met, we were like two people falling in love. We could chat twenty-four hours a day on WeChat [an SNS app on mobile phones]. We had so much to say to each other. When she moved into my house after she broke up with her ex-girlfriend, we would chat until 3 a.m. almost every night for the first month and then we lived together. We were then legally married, bound together by law. And we’re said to each other, if we remain single, we have to take care of each other. We have to be mentally prepared because we would not have children.

Though satisfied with each other’s companionship, Ling and Su’s pressing pressure from their natal families again. Ling told me in our recent chats that they might consider a divorce. In shock, she told me:

It’s been almost two years. My parents are pushing us to have kids even though we really don’t want to. What can we do if our parents insist that children must come along with the marriage and force us to do so—if not physically but mentally? It is difficult for us to take care of ourselves, and how can we afford to have a child?

Compulsory reproductive responsibility is far more punitive than Ling and Su had imagined. The assumed natural connection between heterosexual marriage and reproduction has become a route that does not allow divergence in the Chinese society. The idea of getting married without the next move of having children is considered abnormal in a majority of people’s minds, especially in Ling’s parents’ generation. Thus, the more difficult task of persuading their parents of their right not to have children is even more central for these gay couples.

Shan — Lala, 30, Makeup Artist (Shenyang)

Shan got married in Shenyang to a gay nonlocal. She is among the two Shenyang lala couples who live together in a shared house without their gay husbands. The shared house had become a gathering space for gay people in Shenyang to seek advice on cooperative marriage and to find a partner. Shan, like many gay individuals, has been growing fond of self-help groups and the possible direction of a developing subculture among gay people in cooperative marriages. Xiong, one of the four lalas and the leader of a local LGBT group, told me the key idea of this shared house:

It is not to say that we don’t have conflicts. But we understand and tolerate each other. The four of us [two pairs of lalas] may still live together when we get old, even with our cooperative-married partners. We are friends anyway. Actually we’ve always thought about establishing a home for the aged here for lalas or tangtang. Although it is not possible here in China, the least we can do is to live in a shared house . . . a new type of family arrangement.

In spite of the organizational advantage and sound preparation of cooperative marriage, Shan’s gay husband divorced her after they’d been married for one year, because she was still hesitating over the child issue. In our first interview, Shan told me that she was not sure about having children but was thinking over the issue. However, the fact that her husband could not wait for their child and remarried another person is difficult for us to take care of ourselves, and how can we afford to have a child?

LGBTQ POLICY JOURNAL

VOLUME V // 75

74
Discussion

Strategic Rainbow Families

Lalas and gay men who want to have children have creatively taken advantage of the institution of heterosexual marriage. By cooperating to make up a legitimate union for reproduction, lalas and gay men strategically resort to the institutional safeguard of heterosexual marriage. These rainbow families17 not only serve to relieve gay people’s constant pressure of being discovered, being discriminated against, and failing filial expectations, but are also emerging in gay politics to initiate new forms of families.1

Consensus is central in the process of negotiating a cooperative marriage, and the issue of childbearing becomes the primal concern among all the “terms and conditions.” Consensual childbearing and childrearing could provide the motivation for the couples to preserve their rainbow families. Even if some couples do not want to raise children together, they are more likely to compromise/cooperate with each other on family matters and to make use of the networks created by the rainbow families.

Moving Forward to a Healthier Legal System

Activists and critics have pointed out that couples in cooperative marriages have clung to the notion of compulsory heterosexual marriage without challenging its fundamental discriminatory and disciplinary sanctions on social members.1 This is especially evident when it comes to the legal issues concerning childbearing. Children born out of wedlock are barely protected by law, one of the most popular reasons for lalas and gay men to rely on the institution of heterosexual marriage. What I find more troubling are the biased perceptions, intolerance, and injustice against both sexual minorities and single people in China. These so-called deviants from cultural norms are further rendered abnormal and are not entitled to certain rights. Couples in a cooperative marriage who do not want to have children are constantly being pressured after their marriage to extend the family line. Such a disciplinary mechanism is difficult to fight, since the structural inequality and injustice are not addressed in the Chinese culture and legal system—though we are continuing to see how creative and cooperative these new rainbow families may be.

As argued above, the legal system in China is discriminatory and unfair. Anti-discrimination policies and legislation against gay people should be put on the agenda. It is equally important to raise awareness of the issue of compulsory heterosexual marriage and reproduction. Community events and activism should include general public education on sexual minorities and the prejudiced compulsory heterosexual marriage in China.

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She has been involved in feminist and LGBT movements in China since 2011. She cofounded the Sinner-b LBT feminist group in 2011 and the r&B bisexual group in 2013 with other feminists and bisexual activists. Her research interests include queer studies, feminism, China studies, and studies of social movements. She has presented in a number of international conferences and programs on issues relating to China’s feminism and LGBT movements and cooperative marriage.
Addressing Harassment and Discrimination by Law Enforcement Against LGBT Police Officers and Community Members to Improve Effective Policing

By Christy Mallory, Amira Hasenbush, and Brad Sears

ABSTRACT
This article examines the impact of discrimination and harassment against LGBT people within the law enforcement context and presents options for addressing these issues to improve policing efforts. We find that mistreatment of LGBT people in the context of law enforcement is ongoing and widespread. Discrimination and harassment based on sexual orientation and gender identity can negatively impact the ability of law enforcement departments to effectively police within their communities. Several policies and practices can be implemented by governments and law enforcement departments to reduce discrimination and harassment against LGBT people and, in turn, improve policing efforts across the United States.

Introduction
Discrimination and harassment based on sexual orientation and gender identity within the context of law enforcement have been widespread and pervasive problems for decades. Data from a wide range of sources shows that such harassment and discrimination is greatest for LGBT people of color, transgender persons, and youth. Historically, police forces often targeted LGBT citizens through the use of sodomy laws, bar raids, profiling, entrapment tactics, selective arrests, and excessive physical violence. Additionally, beginning in the 1940s, many LGBT people were driven out of careers in law enforcement through purges at the federal, state, and local levels. Recent research shows that employment discrimination against LGBT officers and police harassment of LGBT citizens by law enforcement continue to occur throughout the United States, despite changes in laws and policies to become more protective of LGBT people over time.

Discrimination and harassment against LGBT people by and in law enforcement can impede effective policing in several ways. Specifically, such discrimination and harassment can:

• Result in police forces with characteristics that do not reflect those of the community
• Make LGBT citizens hesitant to approach the police to report crimes or to seek help

Several types of LGBT-supportive policies and practices could be implemented by governments and law enforcement departments to reduce discrimination and harassment against LGBT people. For example, the federal government could mandate LGBT-inclusive nondiscrimination requirements as a condition of receiving Department of Justice grant funding, and individual departments could establish positions for officer liaisons with the LGBT community.

By reducing discrimination and harassment against LGBT people, these policies and practices would likely improve policing efforts.

Evidence of Recent Discrimination and Harassment Against LGBT People Within the Law Enforcement Context
Recent survey data, court cases, administrative complaints, qualitative research studies, and anecdotal evidence documented in media outlets, reports by governments and nongovernmental organizations, academic journals, and other scholarship indicate that discrimination against and harassment of LGBT people in the law enforcement
context is widespread and pervasive. Additionally, evidence collected from these sources suggests that members of the LGBTQ community are less likely to report when they have been victims of crimes, as well as less likely to cooperate with law enforcement more generally.

**Discrimination Against the LGBTQ Community by Members of Law Enforcement**

A number of surveys have found evidence of mistreatment of LGBTQ citizens by law enforcement, including verbal, physical, and sexual harassment and assault; inadequate handling of crime reports and complaints filed against law enforcement; and baseless stops and entrapment. Survey data indicates that certain groups, including transgender people, youth, and people of color are particularly vulnerable to such mistreatment.

Across five surveys conducted since 2011, of LGBTQ people who had interacted with police, 14 percent to 66 percent reported being verbally harassed or assaulted, 2 percent to 21 percent reported being physically harassed or assaulted, and 3 percent to 24 percent reported being sexually harassed or assaulted.

Specific examples of recent verbal, physical, and sexual harassment and assault of LGBTQ people by law enforcement have been documented in court cases, media outlets, and academic papers. For example, in 2011, a Philadelphia man filed a complaint against the city, alleging physical and verbal harassment by police who responded to his injury report, resulting in his injury.27 According to the complaint, several police officers beat the man’s partner while repeatedly calling him “nigger” and “faggot.” When the man complained of pain due to being handcuffed, the officers called him “faggot, you pussy faggot,” and “just wait, I hear you squaill, faggot.” Both men were treated for their injuries at a hospital. In another case filed against the city of Fresno, a man reported that he was subjected to a violent attack by law enforcement officers, including verbal threats, such as “fucking fag;”20 and a trial court awarded a Massachusetts police officer $250,000 in back pay and damages after he attempted suicide, in part, as a result of his coworkers calling him “fucking fag” and “faggot” and sending children’s toy blocks spelling “FAG” to his home.

In addition, the accounts included examples of severe physical and sexual harassment. For example, a jury found in favor of a New York police officer whose fellow officers revealed their naked body parts to him and “pressed him against a table and humped him” in front of others;22 a police department in California settled a case in which an officer alleged that fellow officers harassed him by simu- lating anal sex on him during a training class, insisting that he masturbate in front of young boys, and [suggesting] he was infected with HIV;19 a jury awarded $5.1 million to a correctional officer with a sheriff’s department in New York whose harassment included the display of simulated pornographic images of him engaged in sex with children and animals, being attacked with a chair, and having his knee injured;31 and a transgender correctional officer in New Hampshire reported that she resigned after the department treated her as a penalty for being transgender and allowing her to pursue her gender identity, including coworkers kicking her, snapping her in the breasts, threatening to handcuff her, and verbally abusing her.31

The Impact of Sexual Orientation and Gender Identity Discrimination in the Law Enforcement Context on Effective Policing

Data from the 2014 Gallup Daily Tracking Survey suggests that there are nearly 9.5 million LGBTQ adults living in the United States,34 and Census data shows that same-sex couples live in 99 percent of US counties.35 As such, LGBTQ people live in every community that law enforcement departments serve and protect, regardless of geography or population size.

Discrimination and harassment based on sexual orientation and gender identity both within law enforcement and by law enforcement against LGBTQ people in their communities can impede effective policing in a number of ways. First, discrimination against LGBTQ law enforcement personnel likely leads to underrepresentation of LGBTQ officers, resulting in police forces that are less diverse than the communities they serve. Research indicates that having a diverse and inclusive police department is important for building trust and effective partnerships between officers and citizens.26 Additionally, the survey asked respondents whether their fellow officers showed preferential treatment to someone who was LGBT.26

Recognizing these benefits, several law enforcement departments in various localities across the country have increased efforts to hire LGBTQ law enforcement personnel as part of their policing strategies.36 The police chief in St. Paul, Minnesota, for example, decided to actively recruits LGBTQ law enforcement personnel, explaining that “[i]t only makes sense as we try and recruit officers for the department that are representative of the community, and do as the chief is mainstream everybody. . . . If it affects the gay and lesbian community, it affects the entire community.”

Survey data further show that LGBTQ people report that law enforcement officials often mishandle their reports of violence and other crimes. For example, in the 2014 national survey of LGBTQ people and people living with HIV, 41 percent of those who had experienced discrimination by law enforcement resulted in verbal abuse, 39 percent of those who were victims of sexual assaults reported that police failed to address their complaints.8 Further, in the largest survey of transgender people to date, 46 percent of respondents reported that they were uncomfortable seeking police assistance.9 Many accounts included allegations of repeated and baseless stops and entrapment. For example, in response to a 2009 survey of LGBT officers, 41 percent of those who had experienced violence reported having negative interactions with law enforcement, including verbal abuse and entrapment.15

Several national surveys of transgender people reveal that there are nearly 9.5 million LGBTQ adults living in the United States, and Census data shows that same-sex couples live in 99 percent of US counties. As such, LGBTQ people live in every community that law enforcement departments serve and protect, regardless of geography or population size.

Rates of harassment and assault found in the surveys were highest among particularly vulnerable groups within the LGBTQ community, including transgender people, youth, and people of color. For example, in response to a 2012 survey examining the interactions of law enforcement with Latina transgender women, 66 percent of the women reported that they had been verbally harassed, 21 percent reported that they had been physically assaulted, and 24 percent reported that they had been sexually assaulted by law enforcement.28 In one incident in 2007, a Native American transgender woman was repeatedly raped in an alley by two officers of the Los Angeles Police Department. According to the woman, one officer yelled at her, “You fucking whore, you fucking faggot,” and slapped her across the face. Before they left, the second officer reportedly told her, “That’s what you deserve.”29 In another 2013 incident, the Wayne County Sheriff’s Department in Michigan reportedly caused injuries to several patrons when they raided a private club in Detroit whose members were primarily African American gay men, lesbians, and trans- gender women. In response, 50 people entered the club and “over 350 people . . . were handcuffed, forced to lie down on the floor, and detained for up to twelve hours, left to ‘sit in their own urine and waste.’ Some were kicked in the head and back, slammed into walls, and verbally abused. Officers on the scene were heard saying things like ‘it’s a bunch of fags’ and ‘those faggots in here make me sick.’” Many LGBTQ people also report that their complaints of discrimination and harassment by law enforcement are inadequately handled. In a 2014 national survey of transgender people and people living with HIV, 41 percent of those who had experienced violence reported having negative interactions with law enforcement.8 Of those respondents, 15 percent reported being terminated, 37 percent reported being threatened with termination, 68 percent reported being verbally harassed by their coworkers, 43 percent reported being threatened with violence, 18 percent reported being physically attacked by coworkers, and 53 percent felt that their safety was jeopardized due to isolation by peers.10

**Specific Examples of Discrimination and Harassment**

Our research identified 106 documented examples of employment discrimination and harassment based on sexual orientation or gender identity against law enforcement personnel that occurred from 2000 through 2014.38 Many accounts included allegations of repeated and baseless stops and entrapment. For example, in response to a 2009 survey of LGBT officers, 41 percent of those who had experienced violence reported having negative interactions with law enforcement, including verbal abuse and entrapment.15

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community.46 Similar recruitment policies have been implemented in other large metropolitan areas—including Los Angeles,47 New York,48 Seattle,49 Salt Lake City,50 Atlanta,51 Indianapolis,52 Milwaukee,53 and Baltimore—54 as well as in middle-sized communities, including Wilton Manors, Florida, a town with fewer than 12,000 residents.55 Second, persistent targeting, profiling, and harassment of LGBT people by law enforcement can make LGBT people hesitant to report crimes and seek help from the police. The studies suggest that LGBT people underreport crimes committed against them, including intimate crimes, in part due to discrimination and harassment.43 A 2013 survey of LGBT people and people living with HIV found that only 56 percent of respondents reported such incidents to the police.44 Additionally, in response to a survey of gay and bisexual men, 40 percent of respondents indicated that they believed contacting the police was not helpful or very unhelpful, and 59 percent thought that police would be less helpful to gay or bisexual men experiencing intimate partner violence than to heterosexual women.45

Several metropolitan police, even in states without legislative protections from discrimination based on sexual orientation and gender identity, have adopted internal policies to prohibit employment discrimination against LGBT officers.56 Additionally, several major metropolitan police forces have implemented bias-based profiling prohibitions that include sexual orientation and gender identity, including the Chicago Police Department,57 the Los Angeles Police Department,58 the Phoenix Police Department,59 and the San Francisco Police Department.60 Further, several major metropolitan police departments have internal policies regarding police interactions with transgender individuals.61 Such policies establish standards for using preferred pronouns as requested by the individual, transporting and housing people based on safety and gender identity, and requirements that personal searches be conducted only when appropriate. Boston,62 Chicago,63 Los Angeles,64 Philadelphia,65 and the District of Columbia66 are some examples of cities that have these policies in place. However, they may be less effective in places that are less likely to be more easily implemented and accepted internationally, resulting in higher levels of tolerance and equality. This could lead to more LGBT people working with police forces and higher community collaboration and acceptance from LGBT people.

Trainings
Police departments could implement trainings focused on reducing discrimination and harassment of LGBT law enforcement personnel and LGBT citizens. Such trainings could target specific diversity issues or could focus on more specific issues that impact LGBT individuals and communities differently, such as hate violence or intimate partner violence. Such trainings could be a standard part of all police academy education or continuing officer education and could be also implemented specifically when they may be especially salient, like around the time of Pride Parades. Police departments in Chicago,67 Philadelphia,68 Santa Barbara,69 and Michigan70 have implemented sexual orientation and gender identity specific trainings in a variety of contexts. These trainings could improve the effectiveness of the department by increasing acceptance in the workplace, improving the department’s ability to assist LGBT victims of crimes, and facilitating engagement with the LGBT community.

Outreach and Liaisons to the LGBT Community
Some law enforcement agencies have created LGBT liaison positions within their departments. For example, Washington, DC’s Metropolitan Police Department created a Gay and Lesbian Liaison Unit as part of its community policing strategy, which correlated with an increase in the reporting of crimes against the LGBT community.62 Many other cities across the country have also appointed liaisons to the LGBT community, including San Francisco,63 Atlanta,64 Dallas,72 Cincinnati,73 Boise,74 Fargo,75 Minneapolis,76 and New York City.77 These examples of direct governmental support of LGBT officers and the LGBT community can encourage engagement of the LGBT community with law enforcement, improve reporting of crimes among LGBT victims, and send a message of acceptance to LGBT officers within departments.

Citizen Complaint Review Boards
Local agencies separate from the police or community volunteers could establish independent citizen complaint boards to improve interaction with LGBT community members. Such collaborative bodies can include representatives from law enforcement and LGBT citizens. Such independent boards—especially if given necessary investigative powers, including subpoena power, the resources and mandate to investigate and document patterns of discriminatory policing and abuse, along with proper guidelines, trainings, and representation from the LGBT community—are more likely to hold officers accountable to complaints of discrimination or harassment. Independent review boards are also likely to have greater community engagement and higher levels of reporting of police misconduct, because they are separate entities from the police departments themselves. Many cities throughout the nation already have independent review boards in place, including Charlotte,78 Cleveland,79 New York City,80 Oakland,81 and San Diego.82 By establishing these boards, local communities demonstrate their commitment to maintaining proper standards in their police departments and improving relations between the community and the law enforcement.

Federal Level Protections

Nondiscrimination Requirements in COPS Grants
The Community Oriented Police Services (COPS) Office is one of the subagencies of the Department of Justice that administers the COPS (Community Oriented Police Services) grant program that advances community policing efforts across the nation.83 Through its grant programs, the COPS Office has “provided funding to more than 13,000 of the nation’s 18,000 law enforcement agencies. Approximately 81 percent of the nation’s population is served by law enforcement agencies practicing community policing.”84 Given the extensive federal and community reach of the COPS Office, implementing nondiscrimination requirements that include sexual orientation and gender identity in COPS grant programs that advance community policing policies and practices in police forces throughout the nation. Widespread adoption of these policies would likely not only lead to better treatment of LGBT law enforcement personnel and community members, but also greater safety and community engagement of LGBT citizens across the country.

Increased Data Collection Efforts
Federal administrative agencies could include questions about sexual orientation and gender identity in surveys that provide information about citizens’ interactions with police. For example, the National Crime Victimization Survey (NCVS)85 and its supplemental survey, the Police-Public Contact Survey (PPCS),86 together provide information about citizens who have had contact with law enforcement and the circumstances of that contact. Adding questions about sexual orientation and gender identity to the demographic section of the NCVS would allow for comparison among all agencies affected by the PPCS, state nondiscrimination agencies, and respondents’ LGBT status. These analyses could provide important information about where and what types of interventions are needed to reduce discrimination, harassment, and profiling of LGBT communities by police.

Enforcing Existing Legal Protections
Statutes in twenty-one states87 and many local ordinances in cities and counties across the country88 explicitly prohibit discrimination on the basis of sexual orientation and/or gender identity. These statutes and ordinances protect LGBT people from various forms of discrimination, such as discrimination in employment and access to public accommodations and government services.89 However, the extent to which such laws are enforced varies from place to place. Many localities with inclusive nondiscrimination ordinances lack the funding or mechanisms to adequately enforce the law.90 Some refer to states not implementing nondiscrimination ordinances if the state law does not prohibit discrimination.91 Even though such laws and ordinances exist, consistent enforcement of existing laws could provide greater protection to LGBT people.

Adopting New Legal Protections
Twenty-nine states do not explicitly prohibit discrimination based on gender identity by state statute, and thirty-two states do not explicitly prohibit discrimination based on sexual orientation by state statute.92 Absent federal
protections, statutes could be passed in these states to extend nondiscrimination protections for LGBT people across the country. Additionally, ordinances prohibiting sexual orientation and gender identity discrimination can be passed at the local level. Such statutes and ordinances can be comprehensive in terms of the types of discrimination prohibited, including discrimination in public and private sector employment, government services and activities, education, and public accommodations. Prohibiting discrimination in these areas will reduce discrimination and harassment against both LGBT law enforcement officers and LGBT community members.

Conclusion

Research indicates that LGBT people experience discrimination within law enforcement employment and by law enforcement as citizens. Such discrimination can impede effective policing in several ways, including by reducing diversity in police forces and discouraging LGBT people from engaging with police. Several types of LGBT-friendly policies and practices could be implemented by governments and law enforcement departments to reduce discrimination and harassment against LGBT people, including the passage of nondiscrimination laws and policies, nondiscrimination requirements in COPS grants, departmental trainings on LGBT issues, and appointment of LGBT liaison officers.


4 Galvan and Bazargan, Interactions of Latina Transgender Women.


6 Ibid., 46.

7 Lambda Legal, Protected and Served!

8 Ibid.

9 Grant et al., Injustice at Every Turn.

10 National Coalition of Anti-Violence Programs, Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2012.

11 US Department of Justice, Civil Rights Division, Investigation of the New Orleans Police Department, 16 March 2011, 14.


13 Colvin, “Shared Perceptions.”

14 Ibid.

15 Callahan, e-mail message to the Williams Institute.

16 Analysis of raw data gathered by TCOPS performed by Latham & Watkins LLP (on file with author).


20 David Greenwald, “Lawsuit by Former UCS Officer Alleging Race and Sexual Orientation Discrimination Moves Forward After Two Years,” Vanguard Court Watch, 14 February 2011.


22 Pitts v. Onondage County Sheriff’s Department, No. 5-04–CV–0828 (GT/SG/GIL), 2009 WL 3165951 (N.D. N.Y. Sept. 29, 2009); Willis v. County of Onondage County Sheriff’s Department, No. 5-04-CV-828 (GT/SG/GIL), 2010 WL 6609685 (N.D. N.Y. February 24, 2010).


26 "Cook County Sheriff’s Deputy Suing over Anti-Gay Harassment at Work," Sun-Times Media, 27 October 2012; Negotiated Settlement and General Release, Colville v. City of Millville, D. Conn., Civil Action No. 07-5834.


30 Colvin, Gay and Lesbian Cops, 153.

31 Glenn et al., Training the 21st Century Police Officer, 102-103 (“[D]iversity issues, particularly those regarding race, gender, and sexual orientation, are most effectively handled by actively recruiting officers from the communities of concern. Resulting community partnerships can help police ‘make the transition from facilitator of community needs and, through a positive relationship, work to achieve a desirable community.’”).


33 Aaron Beltz and Jason McNichol, “Pink and Blue: Colvin, Gay and Lesbian Cops: Diversity and Effective Policing (Boulder: Lynne Rienner Publishers, Inc. 2012), 133.

34 Ibid.


41 National Coalition of Anti-Violence Programs, Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Related Hate Violence in 2012, 9.


43 National Coalition of Anti-Violence Programs, Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Related Intimate Partner Violence in 2012, 39.


45 Ibid.


50 For example, Columbus, Fort Wayne, and St. Louis. See “Columbus Police Division Directive 3.26,” Columbus, Ohio, Police Division, “EFPD Career Information” Fort Wayne, Indiana, Police Department website; St. Louis Metropolitan Police Department employment form.

51 Chicago Police Department, “General Order G02-04 Prohibition Regarding Racial Profiling and Other Bias Based Policing,” 22 February 2012.

52 Los Angeles Police Department, 2012 Annual Report FY 2011, chap. 9, section 8B.

53 Chicago Police Department, “General Order G02-01-03 Interactions with Transgender, Intersex, and Gender Nonconforming (TGIN) Individuals,” 21 August 2012.


57 PFLAG website, “Chicago Event: Honoree Officer Joe Rios. See also, the GOAL Chicago website.


60 Equality Michigan website, “Training and Speaking.”

61 Colvin, Gay and Lesbian Cops, 167.


63 Atlanta Police Department website, “LGBT Liaison.”

64 Dallas Police Department website, “GLBT Liaison Officer.”

65 Courtis Fuller, “CPD Adds Liaison Officer for LGBT Community,” WWLTV.com, 6 June 2013.


67 City of Fargo website, “Gay, Lesbian, Bisexual, Transgender Liaison Officer.”

68 Human Rights Campaign, Municipality Equality Index, Minneapolis, Minnesota.

69 City of New York Police Department website, “LGBT Liaison Unit.”

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71 City of Cleveland, Ohio, website, “Office of Professional Standards Civilian Police Review Board.”

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81 Ibid.


83 "Local Non-Discrimination Ordinances," Movement Advancement Project.


87 Ibid.


91 Ibid.

92 "National Crime Victimization Survey (NCVS)," Bureau of Justice Statistics, US Department of Justice.


95 “Local Non-Discrimination Ordinances,” Movement Advancement Project.


98 Ibid.

99 State of Oklahoma, Department of Labor, “LGBT Liaison Officer.”


102 Ibid.
With its Gender Action Portal, the Women and Public Policy Program at Harvard Kennedy School provides scientific evidence—based on experiments in the field and in the laboratory—on the impact of policies, strategies, and organizational practices aimed at closing gender gaps in the areas of economic opportunity, politics, health, and education to help translate research into action and take successful interventions to scale.

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