

**DEPARTMENT OF SOCIAL  
JUSTICE**

**GOVERNMENT OF KERALA**



# STATE POLICY FOR TRANSGENDERS IN KERALA, 2015

**(DRAFT)**

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# STATE POLICY FOR TRANSGENDERS IN KERALA, 2015

## (DRAFT)

### I. BACKGROUND & INTRODUCTION

1. The Honorable Supreme Court of India (vide Judgment dated 15<sup>th</sup> April, 2014) has firmly established the right to equality and equal protection for transgender persons (TGs) under Articles 14<sup>1</sup>, 15<sup>2</sup> and 16<sup>3</sup> by prohibiting discrimination on the ground of gender identity. It has expanded the scope of the term 'sex' in Articles 15 and 16, which till recently referred only to binary genders of male and female, to include TG as a third gender. The Court has unequivocally declared that TGs cannot be discriminated against on the ground of Gender.

2. The Judgment also explains that Article 19(1)<sup>4</sup> of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one's right to expression of his self-identified gender. Self-identified gender can be expressed through dress, words, action or behaviour or any other form. No restriction can be placed on one's personal appearance or choice of

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<sup>1</sup>Equality before law-The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

<sup>2</sup>Article 15(2): No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—(a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

<sup>3</sup>Article 16: Equality of opportunity in matters of public employment—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State

<sup>4</sup>All citizens shall have the right(a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; and(f) omitted(g) to practise any profession, or to carry on any occupation, trade or business

dressing, subject to the restrictions contained in Article 19(2) of the Constitution. The Article values privacy, self-identity, autonomy and personal integrity as fundamental rights guaranteed to members of the TG community and stresses that the State is bound to protect and recognize these rights.

3. The judgment has also directed the Centre and State Governments to grant TGs full legal recognition of their gender identity. This includes granting legal recognition to a person's self-identified gender, as male/female/third gender; treating transgender persons as socially and educationally backward classes of citizens and extending reservations in public education and employment; providing separate HIV *sero*-surveillance for transgender persons and appropriate health facilities, amongst others.

4. In addition, the Report of the Expert Committee constituted by the Ministry of Social Justice and Empowerment on issues related to TGs,(Chapter 13)- (22<sup>nd</sup> October, 2013), recommends that Transgender should be declared as the third gender, and a TG should have the option to identify as 'man', 'woman' or 'transgender', as well as have the right to choose any of the options independent of surgery/hormones. Only the nomenclature 'transgender' should be used and nomenclatures like 'other' or 'others' should not be used. It also recommends that a state level authority duly designated or constituted to issue certificates to TGs certifying their gender on the recommendation of a District level Screening Committee headed by the Collector/District Magistrate and comprising District Social Welfare Officer, psychologist, psychiatrist, a social worker and two representatives of transgender community and such other person or official as the State Govt/UT Administration deems appropriate. These certificates issued, the report noted should be acceptable to all authorities for indicating the gender

on official documents like ration card, passport, birth certificate, aadhaar card and so on.

## II. SUMMARY ANALYSIS OF TG ISSUES IN KERALA

5. TG people face injustice at every turn: in their families and homes, in school systems that promise to shelter and educate, in harsh and exclusionary workplaces, at the markets and shops, the hotel front desk, emergency rooms, and at the hands of landlords, police officers, health care workers and other service providers.

6. To understand the issues faced by TGs, the Social Justice department conducted a State-wide survey seeking information on all aspects of their social and personal life. The survey questions covered the following areas- (a) basic details, (b) awareness about one's body, (c) civil rights, (d) self esteem, (e) access to health services and (f) ability to live with dignity and with freedom from violence. It also included a general section to better understand their aspirations, needs, and priorities. More than 4000 TGs provided feedback of which 99% are male to female (M2F) TGs and 63% are TGs married to females. Based on snowballing techniques, the survey estimates the presence of more than 25,000 TGs in the state. The major findings of the survey are provided below:

### **ACCESS TO CAPABILITIES, ECONOMIC OPPORTUNITIES, ASSETS AND SERVICES**

- 58% percent of TG students drop out before completing 10<sup>th</sup> grade (24 percent of TG students drop out even before completion of 9<sup>th</sup> grade).

Reasons for this include:

- Severe harassment making studies impossible.
- Gender related negative experiences at school.

- Lack of poverty/special educational quota or reservation.
- Among those who had to leave school due to harassment, nearly half reported of having experienced a negative home environment;
- 51 percent of the respondents were denied equal treatment in doctor's offices and hospitals;
- 100% of them have had at least one experience of being denied job due to their gender identity.
- 54% of the respondents had a monthly income of less than Rs. 5000;
- Only 11.6% have regular jobs

#### **RIGHT TO DIGNITY & FREEDOM FROM VIOLENCE**

- 52% of the TGs face harassment from the police. 70.3% are not confident to face the police;
- 89% reported of being mistreated at worksite;
- 28% have been sexually harassed or raped, by partners within one year;
- 96% do not raise complaints against violence because of their gender identity.

#### **RIGHT TO EXPRESSION**

- 76% are unable to register gender identity the way they choose in the application form for an Id card or other services.
- 78% have not revealed their gender identity at work due to fear of discrimination.
- 51% hide their gender identity from the family;
- 44% have a sense of shame about the dissonance between their body and gender identity;
- 81% wish to change their identity but have no support from any person for the changes required in their physical appearance;

- 91% have not changed physical appearance through medicine/surgery.
- 41% of the TG population is of the view that they won't be accepted if their gender identity is revealed;
- 52% felt a need to change their physical appearance.

### III. TG POLICY OF THE KERALA GOVERNMENT

6. The genesis of the problems of TGs in India lies in the stigma and discrimination they face in the society, resulting in their exclusion from socio-economic and political spectrum. They are an outlier group of the society. TGs have unique needs, which are overlooked and ignored by society. In view of the systemic injustices that prevent this minority community from realizing equal rights, they are forced to live as second-class citizens in their own countries. To rectify this situation, the State Government issues this policy, to enforce the constitutional rights of TGs, taking into account the Supreme Court judgment (2014) and the findings of the Kerala State TG Survey.

7. This policy covers all the categories of TGs, including but not limited to Female to Male TGs, Male to Female TGs and Intersex people. This policy emphasizes the rights of TGs to self identify as man, woman or TG as stated in the Judgment.

8. This document states that the Government of Kerala's policy on TGs, its goals and objectives, approaches, implementation processes, and highlights selected areas of focus given Kerala's socio-economic context. It explains the broad framework within which TG considerations will be integrated into development interventions in Kerala.

#### A. GOALS AND OBJECTIVES OF TG POLICY

9. The TG Policy supports the attainment of

- A just society where men, women, and TGs have equal rights to access development opportunities, resources, and benefits;
- The right to live with dignity and enjoy a life free from all forms of violence;
- The right to freedom of expression in all matters that affects them; and
- Right to equal voice and participation in key development decisions that shape their lives, communities, and the state.

The results framework for the Government's TG Policy is illustrated in Figure 1.

12.

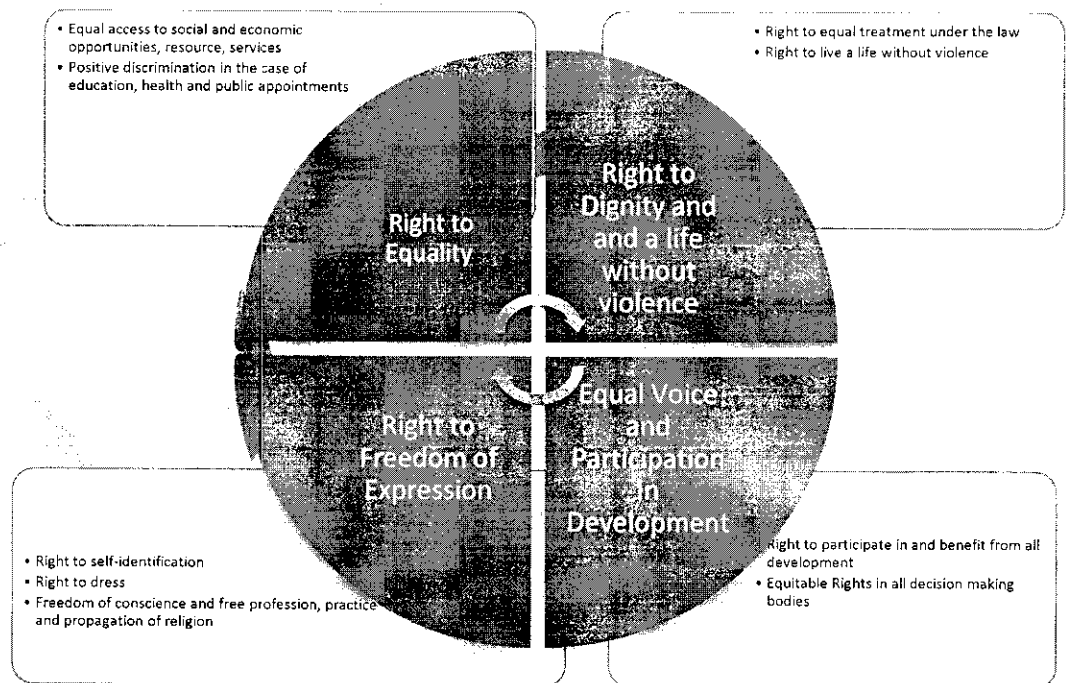


FIGURE 1: RESULTS FRAMEWORK FOR TG POLICY



**Table 1: Strategies and Responsibilities**

Right	Proposed Activity	Responsibility
<b>Right to Equality</b>	<ul style="list-style-type: none"> <li>○ Ensure all Government Departments and public authorities to extend a non-discriminatory treatment to TGs.</li> </ul>	<ul style="list-style-type: none"> <li>○ Overall responsibility: TG Justice Board who will seek annual reports from all relevant agencies</li> </ul>
	<ul style="list-style-type: none"> <li>○ Provide barrier-free access to education, public transport, health, social security, and other services.</li> </ul>	<ul style="list-style-type: none"> <li>○ All Service Providing Entities to implement guidelines</li> </ul>
	<ul style="list-style-type: none"> <li>○ Government agencies, including LSGs managing public places must ensure equal access to TG community</li> </ul>	<ul style="list-style-type: none"> <li>○ All Government agencies</li> </ul>
	<ul style="list-style-type: none"> <li>○ In order to ensure equal access to all services, include TG as a third gender in all application forms for services, employment, and other benefits</li> </ul>	<ul style="list-style-type: none"> <li>○ Each Service or benefit Provider</li> </ul>
<b>Freedom of Expression</b>	<ul style="list-style-type: none"> <li>○ Addressing stigma, discrimination and violence faced by TG people:</li> <li>○ Take steps to prevent TGs from being punished or harassed for cross-dressing and their gender-specific behavior.</li> </ul> <p>Encourage TG cultural activities through:</p> <ul style="list-style-type: none"> <li>○ Providing opportunities for enhancing their artistic skills as well as facilitate their participation in state and other festivals .to perform</li> </ul>	<ul style="list-style-type: none"> <li>○ Law Department, Police, and Justice officialsto take steps to raise awareness of their employees and contractors</li> <li>○ Department of Culture</li> <li>○ Department of Tourism</li> </ul>
<b>Right to</b>	Statutory Requirements as necessary to protect Rights of	<ul style="list-style-type: none"> <li>○ Law Department and TG Justice</li> </ul>

<p><b>Dignity and Life without Violence</b></p>	<p>TG including:</p> <ul style="list-style-type: none"> <li>○ Provide free legal aid to be provided to TG seeking redress against discrimination and violence.</li> <li>○ Every police station should amend forms to record and compile statistics of crime against TGs.</li> <li>○ TG help line (24x7) and crisis management centre – run by the Social Justice Department with the help of NGOs (working in the field of TGs) and CBOs.</li> <li>○ Action against parents who desert or abuse their gender non-conforming children and against doctors who undertake any kinds of unethical conversion therapy</li> <li>○ Sexual assault, sexual harassment and domestic violence laws should be TG inclusive. The State Government should take action to ensure that laws against gender-based violence are made TG-friendly.</li> <li>○ The Juvenile Justice Act should also address the concerns of gender non-conforming children and therefore the Act should be suitably modified/amended.</li> <li>○ Criminal and disciplinary action against delinquent police official in cases of violations of human rights of TG persons</li> <li>○ Ensure the rights of TGs regarding marriage, partnership, living relationship and parenting.</li> <li>○ Ensure separate toilet facilities for TGs.</li> </ul>	<p>Board</p> <ul style="list-style-type: none"> <li>○ Department of Home</li> <li>○ Director-General of Police</li> <li>○ Local Self Government Departments</li> <li>○ KELSA to expand services for TG</li> </ul>
<p><b>Right to Employment</b></p>	<ul style="list-style-type: none"> <li>○ Self-employment grants must be made available to TG to initiate activities related to raise incomes as well as TG Interests</li> <li>○ Workplaces/ offices in public and private sector need to sensitize employers and employees on issues of</li> </ul>	<ul style="list-style-type: none"> <li>○ Department of Labor and Department of Industries</li> </ul>

	<p>TG. Anti-discrimination policies must be instituted and meaningfully implemented in the processes of hiring, retention, promotion and employee benefit schemes. Workplace sexual harassment policies should be made TG inclusive.</p>	
<p>Right to Equal Access to Education Services</p>	<ul style="list-style-type: none"> <li>○ Educational institutions/Universities should issue a TG Policy to address issues gender non-conforming students and TG students as well as establish an anti-discrimination cell to monitor any form of discrimination/harassment.</li> <li>○ Educational institutions/Universities must include an option for transgender along with male and female in all forms.</li> <li>○ Raise awareness of school students towards TGs, starting with the upper primary level.</li> </ul>	<ul style="list-style-type: none"> <li>○ Department of General Education and Higher Education</li> </ul>
<p>Right to Equal Access to Health Services</p>	<p><b>Schemes for Healthcare</b></p> <ul style="list-style-type: none"> <li>○ TGs should be included in the Rashtriya Swasthya Bima Yojana and provided health insurance.</li> <li>○ Self-Help Groups or Societies of TGs should be able to avail the benefits under the Comprehensive Health Insurance Scheme (CHIS) also. Health insurance card should be issued to the TGs.</li> <li>○ A fund, should be established for Sex Reassignment Surgery (SRS) in Government hospitals.</li> <li>○ All Govt. hospitals should have policies on registration and admission of TGs, training and sensitization of health care providers about TGs and their health issues.</li> <li>○ Directives should be issued by the Department of Health to all hospitals to provide health care facilities to them without any discrimination, so that they can access all hospitals without hesitation.</li> <li>○ Proper counseling to TGs about options available in relation to gender transition and proper post-operative follow-up counseling and support, should</li> </ul>	<p>Department of Health, Department of Social Justice</p>

	<p>be given.</p> <ul style="list-style-type: none"> <li>○ Separate HIV Sero-surveillance Centres should be established to address several sexual health issues faced by TGs.</li> </ul>	
Right to Voice and Participation	<ul style="list-style-type: none"> <li>○ Equitable rights in public decision making bodies that affect TGs</li> <li>○ Establish Shelter homes in different parts of the State for the exclusive use of TGs according to the population of TGs in those areas.</li> <li>○ Under housing schemes including Indira Awaas Yojana subsidy must be set aside to TGs for constructing houses. The assistance given for housing of TGs can be a combination of grants, subsidies, loans depending on the income of the beneficiary</li> <li>○ Day care centres for elders should be repositioned to accommodate the interests of TGs.</li> <li>○ Establish capacity development of counselors, Anganwadi workers, ICDS, ICPS, DCPOs and other frontline service providers to be responsive to the needs of TG children</li> <li>○ Ensure that institutional staff of short-stay homes, orphanages, adoption and fostering services are sensitive to the needs and concerns of such children addressing the concerns of gender non-conforming children and TGs.</li> <li>○ <b>Monthly Pension scheme for Destitute TGs</b> – Financial assistance should be provided as monthly pension for destitute TGs and those above the age of 55.</li> </ul>	<p>Department of Social Justice Local Self Government Department</p>
	<ul style="list-style-type: none"> <li>○ <b>Scheme on Provision of Food</b> – BPL Ration Cards</li> </ul>	<p>Department of Food and Civil</p>

	under Public Distribution System should be given to the TGs to provide food at free/subsidised cost.	Supplies
	<ul style="list-style-type: none"> <li>○ Set aside an equitable amount of funds for addressing TG Issues</li> <li>○ Open a grant window for accredited NGOs working with TG community to implement schemes and programmes to develop the capacity and skills of TG.</li> <li>○ All Departments must ensure that all Government forms include TG in addition to male and female,</li> </ul>	All Departments

13 The above together provide a cohesive and comprehensive results-based framework for TGs to achieve their Constitutional rights and live as equal citizens in the State. The results framework will guide all institutional stakeholders in designing their contribution to TG Justice. Capacity development and gender issues will form crosscutting issues in all four dimensions.

#### B. POLICY APPROACHES

The basic approaches of the Policy are the following -

- Ensure that all rights of TGs are protected and enforced, including the right for self-identification of gender as man, woman or TG and the right to expression.
- Ensure equal access to all services of the Government;
- Support positive discrimination to address inequities in areas of education, health, and public appointments.
- Raise public awareness of TG rights and develop capacity of relevant stakeholders to enforce rights.
- Provide proper mechanisms to ensure equal access to all services and benefits as well as effective mechanisms to address issues of violence and harassment faced by TGs.
- Effective implementation and monitoring that TG rights are being protected and implemented and fine-tuning policy when required.

C. STRATEGIES AND RESPONSIBILITIES IN IMPLEMENTING THE POLICY

14. The strategies and responsibilities of different actors in implementing the policy are indicated in Table 1. This is not an exhaustive list, and others may be added as determined by the proposed TG Justice Board.

D. POLICY IMPLEMENTATION ARRANGEMENTS

**15.Accountability Framework for Policy Implementation:** In order to ensure that the TG rights are protected, and to mainstream them into society, a State TG Justice Board and district TG Justice committees are to be established under the Department of Social Justice, Government of Kerala. The TG Justice Board, Kerala is to be constituted by the Government of Kerala as detailed in Table 2.

Table 2: Members of the TG Justice Board	
Chairperson	<ul style="list-style-type: none"> <li>• Honorable Minister for Social Justice</li> </ul>
Member Secretary	<ul style="list-style-type: none"> <li>• Secretary, Department of Social Justice</li> </ul>
Members:	<ul style="list-style-type: none"> <li>• Secretary, Department of Home affairs</li> <li>• Secretary, Department of Finance</li> <li>• Secretary, Department of Health</li> <li>• Secretary, Departments of General Education</li> <li>• Secretary, Department of Law</li> <li>• Secretary Department of Culture</li> <li>• Secretary Department of Local Self Government</li> <li>• Director of Social Justice</li> <li>• Director of Public Instruction</li> </ul>
Nominated Members	<ul style="list-style-type: none"> <li>• One representative from an NGO, which has been working for the rights of TGs for a significant period of time. The representative should also have a good track record in this field.</li> <li>• Five representatives from TG community</li> </ul>

At the district level, a TG Justice Committee will be established in each District.

16 The district TG Justice committees are to be constituted by the Government of Kerala as detailed in Table 3 below:

Chair person	<ul style="list-style-type: none"> <li>• District Collector</li> </ul>
Member Secretary	<ul style="list-style-type: none"> <li>• District Social Justice Officer</li> </ul>
Members	<ul style="list-style-type: none"> <li>• City Police commissioner/District Police Chief</li> <li>• Rural SP</li> <li>• District Medical Officer</li> <li>• District Labour Officer</li> <li>• Deputy Director Education</li> <li>• District Child Protection Officer</li> </ul>
Nominated Members	<ul style="list-style-type: none"> <li>• One representative from a Community based Organization (CBO), which has been working for the rights of TGs for a significant period of time. The representative should also have a good track record in this field.</li> </ul>
	<ul style="list-style-type: none"> <li>• Four representatives from TG community</li> </ul>

17 **Functions of the TG Justice Board:** The functions of the TG Justice Board would be as follows

- i. TG Justice Board should monitor and oversee the implementation of the TG Policy. This would facilitate policy and institutional reforms that enable access to social, economic development schemes for the poor and other at-risk TG groups;
- ii. Ensure convergence of existing schemes across departments for a more targeted and focused approach towards well-being of TG community;
- iii. Issue guidelines as necessary to ensure equality and equity of TGs;

- iv. Ensure that sufficient and quality development projects, programmes, and schemes are formulated and adequate funds are allocated for effective implementation of TG Policy;
- v. Require every relevant Department to submit an annual report on steps taken to protect TG rights, budget expenditures, and results achieved from each Department be submitted no later than June 30th of the financial year; and
- vi. Facilitate awareness programmes, in association with NGOs and community-based organizations (CBO) to sensitize public about TGs through mass media and other method of publicity campaign.

18 The Gender Cell in the Department of Social Justice must support the TG Justice Board in undertaking its responsibilities. The functions of the Gender Cell in this regard include:

- o Implement measures or instructions by the TG Board; and
- o Issuance of gender identity certificate to a TG person, based on the recommendation of the District TG Justice Committee. The certificate issued by the Cell should have the self-identity that the individual chooses (male/female/ TG) which can be used to revise all the legal documents such as voter ID, passport, drivers license, aadhar. The certificate should be acceptable to all authorities for indicating the TG's gender on all official documents and to avail access to all eligible schemes and benefits.

**5. Functions of the District TG Justice Committee**

19 The functions of the District TG Justice Committee would be as follows

- i. Has the responsibility of implementing and monitoring programmes for the social, economic, and political development of TGs



- ii. Constitute a screening committee for the verification of the application for the issue of gender identity certificate. The screening committee should be a subcommittee of the district TG Justice Committee, chaired by the District Medical Officer, with the psychologist, psychiatrist, the CBO representative and the 4 representatives from the TG community as members.
- iii. Issue recommendations to the TG Justice Board for gender identity certificate based on the reports of the screening committee.
- iv. Set up and monitor TG Support and Crisis Intervention Centres (TSCIC), on the model of Rape and Crisis Intervention Centres. The centre should undertake counseling programmes, mental health services, sensitization programmes and crisis intervention, with the help of CBOs. The centre should also function as an information centre and support centre for the TGs and the parents of gender nonconforming children. The centre should include qualified counsellors and community counsellor.

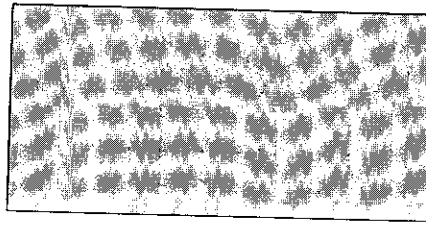
**E. MONITORING AND EVALUATION OF THE RESULTS OF THE STATE'S GENDER POLICY**  
**TABLE 2: SAMPLE RESULTS FRAMEWORK FOR GENDER EQUALITY & EMPOWERMENT IN KERALA**

20 The State Government gives high priority to monitoring and evaluation of policy results. Table 4 illustrates the type of outcome and outputs indicators associated with each of the four key dimensions. TG-aware monitoring and evaluation capacity development will be a module in the initial training conducted by Department of Social Justice. However, until systems are set up to integrate TGs into the monitoring system of the Government, annual monitoring surveys will be conducted to better understand the impact of the policy on TG community. Indicators in the Annex will be the basis of the monitoring tool. Utilizing a methodology agreed with TGJB, Department of Social Justice will also

conduct a mid-term evaluation of policy implementation and results in 2018, three years after the initiation of the policy implementation.

## RESULTS FRAMEWORK AND SAMPLE ASSOCIATED INDICATORS

Goals/Impact Universal Results Framework for gender equality	Equal and Equitable Rights	Freedom of Expression	Life with Dignity and Life without Violence	Voice and Participation
<p><b>Outcomes/Objectives</b></p> <p>(Outcomes are defined and understood as owned by the State; they reflect expected development changes in programme countries.)</p>	<p>Indicators that demonstrate that TGs have equitable access to all public services.</p> <p>Zero dropouts in schools and colleges on grounds of discrimination.</p> <p>Increased TGs in public appointments.</p>	<p>TGs perceive that they have the freedom to wear the dress they like and to express themselves in any gender as they wish.</p> <p>Number of cultural activities organized with TG participation.</p> <p>National TG festival organized by state government</p>	<p>TG's perceive that their ability to live a life of dignity has improved after the issuance of the Policy.</p>	<p>Nominated member in Legislative Assembly and Parliament</p> <p>Equitable representation in democratic and public decision making bodies</p>
<p><b>Intermediate Outcomes and Outputs for TG Equality (results of different departments and agencies at the institutional level)</b></p>	<p>Reduced dropout rate among transgender</p> <p>All service-related forms allow self-identification as TG in addition to male and</p>	<p>IEC Program on the rights of TGs undertaken by the Government of Kerala covering different levels including schools,</p>	<p>Raising awareness of Police employees on the rights of TG.</p> <p>Reduced discrimination by service providers at different levels of State Administration</p>	<p>Process to incorporate TGs in democratic bodies</p>

	<p>female Reservations for TGs in Public Appointments</p>	<p>public bodies, communities, and state effectively influencing mindset changes to TGs.</p>	<p>Incidence of discrimination against TGs by public and partners reduced.</p>	
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