REPORT OF THE WORKSHOP ON

The Role of National Human Rights Institutions in Promoting and Protecting the Rights, including Health, of LGBTI People in Asia and the Pacific

United Nations Conference Centre, Bangkok
24-25 February 2015
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Acknowledgments

This report documents the presentations and discussions made during the Workshop on the Role of National Human Rights Institutions (NHRIs) in Promoting and Protecting the Rights, including Health, of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People in Asia and the Pacific held from 24-25 February 2015 at the United Nations Conference Centre in Bangkok, Thailand.

Many people were involved in making this workshop possible. The organizers would like to gratefully acknowledge all participants and resource persons for their valuable participation and viewpoints. A list of participants is included in the Annex of this report.

Thanks are due to Professor Vitit Muntarbhorn and Adjunct Professor Chris Sidoti who co-facilitated the workshop, and to John Godwin who authored the report.

The meeting partners would like to recognize Natthinee Rodraksa and Pranee Threekul for their outstanding logistical and administrative support, and UN ESCAP for facilitating the use of the UN Conference Centre.

Thanks are also extended to Edmund Settle, Nicholas Booth, Emilie Pradichit and Nadia Rasheed from the UNDP Bangkok Regional Hub; Pip Dargan and Ash Bowe from the Asia Pacific Forum of National Human Rights Institutions (APF); and Midnight Poonkasetwattana and Shankar Silmula from the Asia Pacific Coalition on Male Sexual Health (APCOM).

Finally, the meeting organizers gratefully acknowledge the assistance of APF and meeting participants for their review and inputs, and Ian Mungall and Andy Quan for the final editing of the report.

This workshop was jointly supported by UNDP under the ‘Being LGBT in Asia’ initiative and the Multi-Country South Asia Global Fund HIV Programme (MSA-910-G02-H), APF and APCOM.

‘Being LGBT in Asia’ is a multi-country initiative which aims to promote inclusive development of LGBTI people in Asia and is supported by UNDP, the Embassy of Sweden in Bangkok and USAID.
# Glossary

<table>
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<tr>
<th>ACJ</th>
<th>Advisory Council of Jurists of the APF</th>
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<tr>
<td>AICHR</td>
<td>ASEAN Intergovernmental Commission on Human Rights</td>
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<td>APF</td>
<td>Asia Pacific Forum of National Human Rights Institutions</td>
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<td>ASEAN</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination Against Women</td>
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<td>LGBTI</td>
<td>Lesbian, gay, bisexual, transgender and intersex</td>
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<td>NHRI</td>
<td>National Human Rights Institution</td>
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<td>SAARCLAW</td>
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<td>SOGI</td>
<td>Sexual orientation and gender identity</td>
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<td>SOGIE</td>
<td>Sexual orientation, gender identity and expression</td>
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<td>SOGIi</td>
<td>Sexual orientation, gender identity and intersex</td>
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<td>UNAIDS</td>
<td>Joint United Nations Programme on HIV/AIDS</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UPR</td>
<td>Universal Periodic Review</td>
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Introduction

The Workshop on the Role of National Human Rights Institutions (NHRIs) in Promoting and Protecting the Rights, including Health, of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People in Asia and the Pacific (the ‘Workshop’) was organized and co-sponsored by the United Nations Development Programme (UNDP) and the Asia Pacific Forum of National Human Rights Institutions (APF).

The workshop was organized in cooperation with the Asia Pacific Coalition on Male Sexual Health (APCOM), and was convened with support from ‘Being LGBT in Asia’, a regional initiative implemented by UNDP and supported by the Embassy of Sweden in Bangkok and the United States Agency for International Development (USAID), and the Multi-Country South Asia Regional HIV Programme, which is supported by the Global Fund to Fight AIDS, Tuberculosis and Malaria.

The workshop included:
- Representatives of APF members including the NHRIs of Afghanistan, Australia, Bangladesh, India, Indonesia, Kazakhstan, Malaysia, Mongolia, Myanmar, Nepal, the Philippines, the Republic of Korea, Samoa, Sri Lanka, Thailand and Timor-Leste;
- Representatives of UNDP and UNAIDS;
- Representatives of civil society including APCOM, the ASEAN SOGIE Caucus (ASC), the International Gay and Lesbian Human Rights Commission, TransAction and South Asian Association for Regional Co-Operation in Law (SAARCLAW);
- Representatives of Komnas Perempuan, Indonesia;
- Representatives of USAID and Sweden;
- Representatives of regional bodies including the ASEAN Intergovernmental Commission on Human Rights and the Inter-American Commission on Human Rights;
- Expert individuals; and
- Representatives of the APF secretariat.

The workshop was facilitated by two Co-Chairs:
- Professor Vitit Muntarbhorn, International Human Rights Expert and Professor of Law, Chulalongkorn University, Thailand; and
- Adjunct Professor Chris Sidoti, International Human Rights Expert, Australia.

A full list of participants is included in Annex 3.

Objectives

The objectives of the Workshop were to:

1. Discuss the engagement of NHRIs in the region in the promotion and protection of the human rights of populations of diverse sexual orientation and gender identity (SOGI) in the light of:
   a. The Yogyakarta Principles;
   b. The progress achieved in implementing the recommendations of the APF’s 2009 Yogyakarta Principles Meeting;
   c. The progress achieved in implementing the recommendations of the Advisory Council of Jurists (ACJ) Report on Sexual Orientation and Gender Identity of 2010; and
   d. The recommendations of the 2013 Regional Report on the Capacity of National Human Rights Institutions to Address Human Rights in Relation to Sexual Orientation, Gender Identity (SOGI) and HIV;

2. Agree on priorities for strengthened engagement by NHRIs on human rights and health issues in relation to SOGI in the period 2015–2017;

3. Identify needs for capacity-building, training, regional exchanges of experiences and other support that may be included in forthcoming regional development programming, and to make recommendations to United Nations (UN) bodies and other development partners accordingly.
Key outcomes and opportunities identified

Participants agreed on a Joint Programme of Action and Support on the Role of NHRIs in Promoting and Protecting Human rights in relation to SOGI for the period 2015–2017 (see Annex 1).

The Chairman of Indonesia’s National Commission on Human Rights (Komnas HAM), Prof. Hafid Abbas, invited participants to attend a meeting in Indonesia in 2016 to review the first decade of progress in implementing the Yogyakarta Principles in Asia and the Pacific.

Ms Pip Dargan, Deputy Director of APF, advised that APF is developing a manual and blended learning training programme on the role of NHRIs in addressing LGBTI human rights. Experts on issues relating to NHRIs and LGBTI will deliver the training. APF will deliver its first blended learning programme in 2016.

Prof. Vitit Muntarbhorn identified the following windows of opportunity for strengthening NHRI responses to issues relating to sexual orientation, gender identity and gender expression (SOGIE):

- At the global level:
  - Make use of the post-2015 Sustainable Development Goals to advance the LGBTI rights agenda. For example, ensure LGBTI issues are addressed under Goal 8 in relation to labour, and Goal 16 in relation to rule of law and access to justice;
  - Advocate for reform of the UN so that it can take a stronger leadership role, e.g. by advocating for the World Health Organization (WHO) to remove the labelling of transgender status as a ‘gender identity disorder’;
  - Keep LGBTI and SOGI issues on the agenda of the UN Human Rights Council;
  - Make active use of UN treaty mechanisms and procedures including those relating to the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the Universal Periodic Review (UPR), the agendas of special rapporteurs, and UN special procedures; and
  - Work in partnership with UN Country Teams.

- At the regional level:
  - Make use of the resources and processes of the UN Economic and Social Commission for Asia and the Pacific (ESCAP);
  - For ASEAN NHRI, make use of the ASEAN Intergovernmental Commission on Human Rights (AICHR) (e.g. raise the possibility of an AICHR rapporteur on health) and ASEAN’s development themes as entry points (e.g. LGBTI rights in the service sector, finance and banking, medical services, and insurance); and raise LGBTI rights issues in the context of the ASEAN Declaration of Commitment: Getting to Zero New HIV Infections, Zero Discrimination, Zero AIDS-Related Deaths of 2011, which commits states to non-discrimination in the context of HIV;
  - Explore opportunities in other sub-regional mechanisms, e.g. South Asian Association for Regional Cooperation; Pacific regional bodies; the Arab Commission and Arab Charter; bodies or mechanisms in Central Asia; and
  - Take ownership of the Platform for Action and Support (2015) developed by this workshop and prepare for the meeting to be convened in 2016 to coincide with the ten-year anniversary of the Yogyakarta Principles.

- At the national level:
  - Take advantage of opportunities to include responses to LGBTI and SOGI rights issues in National Development Plans, National Health Plans and other national strategies and action plans. Integrate LGBTI and SOGI rights issues into national guidelines and protocols and maximize use of soft entry points in national policy development, e.g. health, HIV, employment, education and youth policies;
  - Ensure LGBTI and SOGI rights issues are integrated into all aspects of NHRI programming including monitoring, casework and complaint handling, education and advocacy; and
  - Look for opportunities in advocacy through the courts, including formally intervening in litigation as a friend of the court (amicus curiae), noting the advances achieved by favourable decisions of the Supreme Courts of some countries (e.g. the Supreme Court of the Philippines decision of 2010 in the Ang Ladlad v. COMELEC case on political representation and the Supreme Court of India’s decision of 2014 in NALSA v. Union of India recognizing transgender rights).
Summary of proceedings: Day 1

Opening remarks

Opening remarks were provided by APF, UNDP and APCOM. Participants were encouraged to explore how NHRIs can strengthen engagement on LGBTI human rights issues through research, education, promotion, dialogue, law reform, monitoring, advocacy and cooperation. The workshop aims to review progress in implementing the 2010 recommendations made by the ACJ and APF in these areas.

The workshop feeds directly into the ‘Regional Dialogue on LGBTI Human Rights and Health’, to be held 26–27 February 2015 in Bangkok, at which civil society will engage with representatives of government, the UN and NHRIs. It also feeds into Phase 2 of the ‘Being LGBT in Asia’ project launched in February 2015, which is an initiative of UNDP, the Embassy of Sweden in Bangkok and the USAID in partnership with LGBTI civil society organizations.

As official and independent bodies, NHRIs have a legal mandate to promote and protect human rights, and to act to influence laws, policies, practices and attitudes including in relation to the human rights of LGBTI people. In this work, strategic partnerships with LGBTI people and their organizations, religious leaders, law enforcement agencies, lawmakers, judges and UN agencies are critical.

In 2009, APF held a workshop in Yogyakarta hosted by the Indonesian National Commission on Human Rights. The 2009 workshop was convened in response to the recommendations of the Yogyakarta Principles agreed in 2006. The 2009 workshop’s communiqué provided an important resource to direct the work of the APF. In 2010, the ACJ reviewed the compliance of APF member countries with the Yogyakarta Principles and provided recommendations to assist NHRIs to address gaps and inconsistencies. The Yogyakarta Principles, APF’s 2009 Yogyakarta Workshop and the 2010 ACJ report provide the key pillars for the work of the APF and its members in this area.

NHRIs across the region are at very different points of engagement in relation to SOGI issues. Religious, cultural and moral values and sensitivities arise in all countries. The communiqué from the 2009 workshop expressed respect for the right to religion and belief, but also affirmed that the expression of religious beliefs must not violate the human rights and fundamental freedoms of others.

As an outcome of the ACJ Report, APF sought contributions from donors and provided financial support to five member institutions (the NHRIs of Australia, Indonesia, Mongolia, New Zealand and the Philippines,) to undertake SOGI activities domestically. In 2012–2013, the APF, the International Development Law Organization (IDLO), UNDP and SAARCLAW worked with NHRIs in Bangladesh, India, Indonesia, Nepal, the Philippines, Sri Lanka and Timor-Leste to document their capacity on SOGI issues. The review conducted in 2012–2013 found that overall NHRIs have had a significant role in improving and advocating for LGBTI rights. Strong and open leadership from within NHRIs was identified as a key factor in mobilizing political will.

A key element in terms of an NHRI’s capacity to work on these issues is the identification of a staff member within the institution as a dedicated LGBTI focal point. Engaging with civil society and the LGBTI community is a significant factor in developing capacity of NHRIs to support and advocate for LGBTI rights.

Although there is no international treaty that directly addresses LGBTI rights, interpretation of existing treaties has enabled a comprehensive understanding of SOGI rights as set out by the Yogyakarta Principles in the form of 29 principles that act as a checklist. The challenge to NHRIs is to translate these principles into programmatic actions.
Examples that demonstrate how NHRIs are using their mandate and powers include:

- The Commission on Human Rights of the Philippines used its powers to intervene in a case involving a political party (Ang Ladlad) representing LGBTI rights. The Electoral Commission denied the party accreditation in 2007 because it was accused of advocating sexual immorality. The Commission on Human Rights responded with an advisory statement stressing that homosexuality was not a criminal offence in the Philippines. When the Supreme Court heard the case, the Commission was granted permission to intervene as a friend of the court. The refusal of accreditation was overturned by the Supreme Court in 2010 (Ang Ladlad v. COMELEC), setting a precedent for LGBTI rights.

- The Mongolian Human Rights Commission with support from UNDP and the LGBT Centre (a national NGO) undertook a survey and analysis of the national legal framework for discriminatory provisions in relation to LGBTI rights. This was the first survey of this kind undertaken in Mongolia. In its 2013 annual report, the Commission dedicated a chapter to LGBTI rights including survey results and case studies of abuse and violence that had previously been hidden due to fear of social stigma. The Mongolian Commission translated the Yogyakarta Principles document into its national language, conducted training with police and law enforcement agencies, and urged the Mongolian Government to implement the recommendations of the Human Rights Committee on LGBTI issues. The Mongolian Commission used quantitative survey data and personal stories as qualitative data to bring the human rights issues of LGBTI to the public and government.

- UNDP stressed that addressing LGBTI rights is a cross-cutting priority for the UN in the areas of health, HIV, governance, and access to justice. Addressing LGBTI rights is important to achieve broader social goals relating to reduction of poverty, inequality, social and economic exclusion and requires particular attention in the areas of preventing violence and upholding the rights to education, employment and health care.

It was recognized that NHRIs work in diverse political, religious and cultural contexts and as such are at different points of development in engaging on LGBTI rights. Some NHRIs have made significant progress over the last five years, e.g. by assigning a SOGI focal point, dedicated staff member or dedicated Commissioner. A willingness to proactively engage with LGBTI communities has been a significant key to success.

NHRIs have a role to hold their governments to account and to remind governments of their international obligations and how they apply to LGBTI people, not as new or special laws for people who are LGBTI, but as existing obligations that apply universally.

APCOM was founded in 2007 as a coalition of members from Asia and the Pacific comprising non-profit and community-based organizations, and technical advisors, including from UN partners. APCOM represents a diverse range of interests working together to advocate on, highlight and prioritize HIV and sexual health issues that affect the lives of gay men, other men who have sex with men and transgender people, including their rights, health and well-being. APCOM strongly believes that in order to achieve these goals, we need an enabling legal and policy environment where LGBTI people are fully accepted.

Societies in this region are changing very rapidly. Conventional interpretations of faiths and laws are proving in most cases to be woefully inadequate in responding to rapid change, including previously unknown constructions of diverse genders and sexualities, new ways of expressing oneself, and of behaving and of socially identifying oneself. It is a brave new world, which calls for brave new responses from the leaders of society.

LGBTI people still face stigma, discrimination and violence. The global AIDS response has set goals known as the three zeros: zero new infections, zero AIDS-related deaths and zero discrimination. All of our governments, at least on paper, acknowledge men who have sex with men and transgender people in their HIV programmes, although some bury the terms under the euphemism of ‘key affected populations’; APCOM expects more: equality, no less. LGBTI people and other people whose gender or sexual expression does not conform to the dominant culture’s idea of acceptability, demand a place at the table as equals.
NHRIs in Asia and the Pacific have walked at the front of the journey against prejudice, bigotry, tyranny and discrimination based on ethnicity, gender, religious affiliation, political ideology, disability and other aspects that are now accepted as legitimate grounds for the demand for equality. SOGIE are additional dimensions of our humanity that need NHRI protection. The challenge to NHRIs is to provide leadership by acting as the moral conscience of our nations, thereby offering a beacon of hope for LGBTI communities.

A recent court case from China indicates that views are changing. A clinic was ordered to pay compensation to a gay man for electric shocks intended as therapy to ‘convert’ the gay man into a heterosexual.\(^1\) The court’s acceptance that conversion therapy is wrong indicates that diversity in sexual orientation was understood as a normal feature of human diversity rather than a medical ‘defect’ or ‘disorder’. However, in many countries and even at the international level, diverse gender identities and expressions are yet to be accepted as normal. WHO still refers to transgender status as a gender identity ‘disorder’. The medical profession in India has also been very slow to modernize its position on sexuality and gender identity.

Some countries are beginning to explore models for legal recognition of same-sex relationships. The governments of Thailand and Viet Nam have discussed proposals for law reform in the areas of civil unions and registration of partnerships. Viet Nam has removed penalties for conducting same-sex marriage ceremonies, although it has not taken the further step of legal recognition of same-sex marriage. Proposals have been developed in Thailand for inclusion of sexual orientation in the non-discrimination clause of the Constitution.

However, some jurisdictions are moving backwards and have introduced laws restricting the rights of LGBTI persons (e.g. Aceh Province of Indonesia), and some court cases have been damaging to LGBTI rights (e.g. the Supreme Court of India’s decision in 2013 recriminalizing homosexual conduct as an offence under section 377 of the Indian Penal Code).

While religion, moralistic familial and community responses, and legal conservatism can make it very difficult for law reform to occur, progress can still be achieved through focusing at the level of soft policy, e.g. guidelines and protocols, and promoting a broad and inclusive interpretation of religious principles that appeal to our common humanity.

There is often ambivalence or inconsistency in legislative responses to SOGI issues. The laws of some countries (e.g. of South Asia) are accepting of transgender people yet maintain severe criminal sanctions for same-sex sexual behaviours. On the other hand, some countries impose no penalties on same-sex behaviours yet maintain laws that discriminate against transgender people. Thailand does not criminalize same-sex conduct but the law has been applied to disadvantage transgender people. For example, until recently the Thai military would not accept transgender people and categorized transgender people as mentally ill. However, this provision was successfully challenged in court and ultimately removed with the help of the National Human Rights Commission.

The UN Human Rights Council and its mechanisms including the UPR have been increasingly used to promote LGBTI rights at the international level. The Human Rights Council adopted its first resolution on SOGI in 2011. In 2012, 2013 and 2014, NHRIs issued a joint statement to the Human Rights Council on discriminatory laws and practices and acts of violence based on sexual orientation, gender identity and intersex status. NHRIs are also raising LGBTI issues in their submission to the UPR process, e.g. in Bangladesh.

Support to SOGI rights has been evidenced from the highest level of leadership within the UN including statements from the Secretary-General Ban Ki-moon, the former UN High Commissioner for Human Rights, Navi Pillay and UNDP Administrator, Helen Clark.

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Implementation of recommendations of the Advisory Council of Jurists

The Yogyakarta Principles issued in 2006 included the recommendation: “NHRIs promote respect for the Yogyakarta Principles by State and non-State actors, and integrate into their work the promotion and protection of the human rights of persons of diverse sexual orientations or gender identities.” To support NHRIs to apply the Yogyakarta Principles in their programming, APF’s Advisory Council on Jurists (ACJ) issued a comprehensive set of recommendations for NHRIs in 2010 addressing capacity-building, research, education, promotion and dialogue, monitoring, advocacy and the support of the APF.

UNDP provided an update on progress against these recommendations to the workshop. No specific mechanism has been established for monitoring and evaluation of implementation of these 60 recommendations. However, APF has been tasked with conducting regular reviews of NHRI progress including through the current workshop.

The most comprehensive review of progress to date was the review conducted in 2012–2013 covering progress of NHRIs in addressing human rights in the context of SOGI and HIV in eight Asian countries: Bangladesh, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka and Timor-Leste. The 2013 review was conducted by UNDP, APF and IDLO in partnership with NGOs, community organizations and NHRIs. It highlighted many achievements, including:

- Appointment of SOGI focal points within NHRIs (e.g. in Indonesia, Nepal and the Philippines).
- Active engagement of NHRIs with community-based LGBTI groups, and involvement of those groups in initiatives to improve the capacity of NHRIs and other stakeholders to address SOGI human rights issues. Central to capacity-building is strengthening the relationships between NHRIs and LGBTI communities, so that LGBTI communities can participate in capacity-building efforts as has been effective in Indonesia, Nepal and the Philippines.
- In many of the countries reviewed, there appeared to be a high level of awareness of the role of NHRIs among LGBTI people.

Capacity-building and research

- Nepal appointed a SOGI focal point within the National Human Rights Commission; developed a relationship with the leading national community-based LGBTI organization, the Blue Diamond Society, including providing LGBTI internships within the Commission; and has included SOGI issues as a priority in the Commission’s Strategic Plan.
- Indonesia’s Human Rights Commission has established a sub-committee with a mandate to address SOGI rights issues and has invested in capacity-building of its staff on SOGI issues.
- The Commission on Human Rights of the Philippines has identified HIV and LGBTI-related rights as a priority and engaged in capacity-building of staff on HIV and SOGI issues.

Education, promotion and dialogue

- Timor-Leste’s NHRI has conducted human rights training for people of diverse SOGI at the community’s request.
- Nepal’s National Human Rights Commission has engaged the police directly when an LGBTI community member is arrested or charged, upon request.
- Indonesia’s Human Rights Commission has organized human rights training for community groups and provided training for government and law-enforcement personnel.
- The Commission on Human Rights of the Philippines has engaged in dialogue with schools on prejudices faced by LGBTI students.
Monitoring

- 489 LGBTI community representatives in eight countries were surveyed as part of the 2013 review process. The survey gathered LGBTI community perspectives on NHRI and the process of reporting rights violations through a peer-administered survey questionnaire.
- Nepal's National Human Rights Commission conducted eight investigations both following complaints and *suo moto* (where the government acted on its own accord). The Commission is able to engage with police directly if an LGBTI person is arrested.

Advocacy

- The National Human Rights Commission of Bangladesh specifically addressed SOGI issues in its stakeholder report to the UPR on Bangladesh.
- The National Human Rights Commission of Nepal has supported advocacy for legalizing same-sex marriage through membership of the Committee established at the direction of the Supreme Court. The Commission has also advocated to government bodies including the Ministry of Finance and the Electoral Commission.
- The Human Rights Commissions of Indonesia and the Philippines have acted as *amicus curiae* in court cases. The case in Indonesia related to a transgender man who was arrested for marrying a woman. The case in the Philippines related to refusal of registration of an LGBTI political party (*Ang Ladlad* v. *COMELEC*).

Challenges identified:

- Very few rights violations were reported to NHRI. Reasons for the low levels of complaints of violations lodged by LGBTI people include lack of knowledge of NHRI complaint procedures, concerns about confidentiality and safety, and the availability of alternative means of resolution of complaints such as the intervention of a community organization.
- NHRI activity has been disappointingly low in the areas of advocacy on law reform and education of duty-bearers.
- In the area of research, NHRI would benefit from more information about the different types of violations prevalent in their countries, and the impacts of these violations on human rights and health. This includes the direct and indirect impacts of criminal laws and police abuses, such as the conditions experienced by LGBTI when in police custody or prison, and whether LGBTI communities are deterred from accessing health and social services.

Integration of LGBTI rights issues into HIV responses

The Joint UN Programme on HIV/AIDS (UNAIDS) described the approaches it has used in Asia and the Pacific to integrate SOGI and LGBTI rights issues into HIV responses. This work has been supported by the setting of the global goal of ‘zero discrimination’ by UNAIDS. NHRI should look for opportunities to leverage support for LGBTI rights from the public health and social justice agendas of national HIV responses.

HIV has been a strategic entry point for addressing SOGI and LGBTI rights. Men who have sex with men and transgender people are recognized as key populations at higher risk of HIV in Asia and the Pacific and therefore are priorities for most national HIV programmes. HIV prevalence in these populations is much higher than the general population (e.g. 30 percent HIV prevalence in some transgender communities in Asia).

Discrimination against LGBTI communities increases HIV vulnerability. Discrimination hinders access to HIV prevention, treatment, care and support. Eliminating HIV-related discrimination extends to eliminating discrimination on the grounds of SOGI. Discrimination also affects LGBTI people who are at increased risk of HIV because they are engaged in sex work and/or use drugs.
Support from UNAIDS to NHRI to address SOGI and LGBTI rights issues has included:

• Political commitment to address SOGI and LGBTI human rights from the UN system and advocacy for political commitment for NHRI engagement;
• Strategic information provided by UNAIDS including epidemiological data and analysis of epidemiological trends and the impacts of laws and policies;
• Recognition of the mandate of NHRI in policy advocacy including the critical role of NHRI in achieving social justice;
• Technical support to NHRI to address HIV-related stigma and discrimination;
• Supporting partnerships between NHRI and communities and others, and engagement with the UN and international human rights mechanisms such as the UPR; and
• Financial support.

Resolutions of UN ESCAP make explicit reference to men who have sex with men, opening the doors to address their rights as priority in HIV responses in Asia and the Pacific. For example:

“Noting with particular concern the continuing high prevalence of HIV among key affected populations, including sex workers, injecting drug users and men who have sex with men, as well as the extent of the legal and policy barriers that impede progress in developing and implementing effective ways of responding to HIV and related risks among them.” (ESCAP Resolution 66/10, May 2010)

“Noting with concern the continuing barriers to access to HIV prevention, treatment, care and support faced by key affected populations, particularly sex workers, injecting drug users, men who have sex with men and transgender populations… (ESCAP) Calls on Members to: Initiate… a review of national laws, policies and practices to enable full achievement of universal access to with a view to eliminating all forms of discrimination against people at risk of infection or living with HIV, in particular key affected populations.” (ESCAP Resolution 67/9, May 2011)

The report of the Global Commission *HIV and the Law: Rights, Risks and Health* (2012)² described the evidence of discriminatory laws resulting in human rights violations that fuel the spread of HIV. The Global Commission recommended:

• Countries must reform their approach towards sexual diversity. Rather than punishing consenting adults involved in same-sex activity, countries must offer such people access to effective HIV and health services and commodities.
• Countries must reform their approach towards transgender people including repealing all laws that criminalize transgender identity or associated behaviours.
• We have to change the laws ‘on the books’ but also the enforcement of laws ‘on the streets’. Police abuses also play a role in driving HIV vulnerability.

NHRI in the region have played a range of valuable roles in supporting rights of LGBTI to enjoy their rights including right to health. Some examples from recent years in the table below:

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² The Global Commission on HIV and the Law is an independent body, convened by the United Nations Development Programme (UNDP). http://www.hivlawcommission.org
Role of NHRIs | Country examples
--- | ---
Supporting participatory review and reform of laws that have an impact on HIV (including LGBTI issues) | Bangladesh, Indonesia, Malaysia, Nepal and Thailand
Monitoring implementation of HIV-related laws, policies and programmes (in partnership with community groups) | Nepal and the Philippines
Receiving and adjudicating complaints brought by people living with HIV and key populations | Indonesia, Mongolia, Myanmar, the Philippines and the Republic of Korea
Monitoring and reporting on HIV-related human rights violations | Bangladesh, India, Mongolia, Nepal, the Philippines and Sri Lanka
Educating and raising awareness on HIV and human rights – government, judiciary, health sector, public | Bangladesh, Indonesia, Malaysia, Mongolia, Nepal, Pakistan, the Philippines, Thailand, and Timor-Leste

Progress on law reform since 2010 has included decriminalization of same-sex practices (e.g. Palau) and of cross-dressing (e.g. Samoa), improved legal recognition of transgender persons (e.g. Bangladesh, Hong Kong SAR, India), legal protections against discrimination on grounds of HIV status or sexual orientation and gender identity (several cities in the Philippines), and protection of labour rights and violence protections for sex workers (e.g. Cambodia).

UNDP, UNAIDS and ESCAP have supported national consultations on HIV and the law that addressed the role of NHRIs and included recommendations for capacity building and increased role for NHRIs in addressing human rights violations experienced by LGBTI (and other key populations) (e.g. Fiji, Malaysia, Myanmar, Sri Lanka). NHRIs actively engaged in national HIV legal reviews by participating in planning, providing speakers, assisting with documentation, and participating in consultation meetings.

UNDP, UNFPA and UNAIDS also worked together on a regional study *The Right(s) Evidence: Study on Sex Work, Violence and HIV in Asia* (2015), which found high levels of violence directed at sex workers, and recommended:
- NHRIs should monitor and respond to incidents of violence and violations by State and non-State actors.
- NHRIs should seek to ensure that all guidelines and programmes to prevent and eliminate gender-based violence expressly address the needs of male, female and transgender sex workers.

At the global level, UNAIDS and the Office of the High Commissioner for Human Rights have published guidance for NHRIs in supporting HIV responses. UNAIDS can provide support to NHRIs for:
- NHRI sensitization and training;
- Legal environment assessments and investigations on the rights of key populations;
- Strengthening of complaint mechanisms; and
- Education and outreach programmes with communities and policymakers.

For example, in 2015 UNDP provided support to the National Human Rights Commission of Nepal to ensure that voices of marginalized women and sexual minorities were included in the UPR process.

**Successes and challenges of the LGBTI community**

APCOM presented on ‘Successes and Challenges Faced by LGBTI Communities in Engaging with NHRIs’. APCOM conducted a survey of LGBTI people in 22 Asia-Pacific countries to map advocacy activities. Invitations to complete the questionnaire were broadcast on electronic mailing lists (SOGI, AP Rainbow, MSM-Asia and the Coalition on Sexual and Bodily Rights in Muslim Societies (CSBRI)). CSBRI has emerged as a particularly important
platform for exchanging information and strategies to influence domestic debates. CSBR is a network of feminist and LGBTI activists working in Muslim countries.

Constraints identified for LGBTI community-based responses include:

- Some countries have no LGBTI organizations (e.g. Afghanistan, Jordan, Maldives, Oman and Qatar);
- In some countries, community-based organizations are funded by HIV programmes and therefore their work is oriented to HIV prevention rather than a broader equality agenda;
- In some countries, organizations may engage in relevant activities but may be reluctant to name or identify their actions publicly because LGBTI and SOGI rights and terminology such as ‘gay’ are too sensitive (e.g. Afghanistan);
- In some countries, the LGBTI movement is nascent and advocacy organizations have not been formalized or are fragile (e.g. Kazakhstan, Samoa and Timor Leste); and
- Rural and remote LGBTI populations are seldom reached.

Some countries have a strong history of organized LGBTI movements (e.g. Australia, India, New Zealand and the Philippines). In other countries, engagement with NHRI and human rights advocacy often depends on personalities, and as a result is ad hoc in nature. It is important to ensure that responsiveness to LGBTI issues is institutionalized within NHRI so that the strength of the response is not personality dependent. Political change requires political acumen and a creative approach to identifying entry points for advocacy including HIV, sexual and reproductive health rights, youth policy, and debates on faith and culture. Recognition of the dynamic nature of culture is important, including the capacity for religious views to evolve to reflect progressive social values.

While there is recognition among LGBTI groups of the role of NHRI in handling complaints, there is also appreciation that sometimes it is more effective to advocate to government directly, including through the court system. Some recent advocacy successes include:

- The Delhi High Court judgement in the Naz Foundation Case in 2009, which remains an important milestone because of the quality of the judgement, even though it was subsequently overturned by the Supreme Court in 2013;
- Recognition of a third gender in the laws and policies of Nepal and Bangladesh;
- In Nepal, the recommendation of the Committee to the National Assembly in favour of marriage equality for same-sex couples;
- The introduction of anti-discrimination ordinances in several cities of the Philippines; and
- Development of formal proposals for civil unions of same-sex couples and for constitutional reform to recognize SOGI rights in Thailand.

It should be recognized that NHRI are at different stages in their commitment to addressing LGBTI rights. There can be a lack of engagement from those who perceive SOGI rights to be a claim for ‘special’ rights rather than equal rights.

APCOM strongly recommends that NHRI be proactive in building relationships with LGBTI communities. For example, NHRI staff members should visit the premises of LGBTI community organizations to build trust, make themselves known and gain a better understanding of their communities.

Viet Nam, a country that does not have an NHRI, removed a legal ban on same-sex marriage in 2014. In 2015, a lesbian couple held a marriage celebration on board a Vietnamese airline, documented in a video clip. The Workshop viewed a video produced on this event as an awareness-raising tool.
Discussion points

NHRI participants indicated that they are at varying levels in their understanding and experience of LGBTI and SOGI issues. Some NHRI have little or no prior experience in addressing SOGI issues (e.g. Afghanistan, Kazakhstan, Maldives, Samoa and Sri Lanka) but staff members are interested in strengthening their capacity in this area. For other countries, initial steps have been taken by NHRI to engage with local communities but SOGI rights are viewed as a new and challenging area of work, and competing with many other pressing issues, such as in Timor-Leste.

Some countries such as Indonesia, Nepal and the Philippines have well-established LGBTI and SOGI programmes. The work in these countries is beginning to have substantive impacts on the legal environment, e.g. at least six municipal or district governments have introduced anti-discrimination ordinances in the Philippines. Partnerships between LGBTI groups in the Philippines and the National Human Rights Commission have increased ownership of the agenda. Ideally, NHRI should appoint a staff member with a work plan dedicated to SOGI issues.

Progress has been slow at the sub-regional level. The representative of the ASEAN Intergovernmental Commission on Human Rights (AICHR) pointed out that it is very difficult politically to make regional progress on SOGI issues given the divergent domestic positions of ASEAN states. Progress is likely to be incremental but opportunities may arise in the drafting of ASEAN’s post-2015 vision. AICHR’s focus will be on inserting soft non-political language in its five-year work plan to enable future work in this area to expand. A number of countries in the region do not have strong human rights cultures or institutions. Although the ASEAN Declaration on Human Rights has its limitations, any progress on human rights at the sub-regional progress is a welcome opportunity.

The representative of SAARCLAW emphasized the role of the legal and medical professions. NHRI can benefit from strengthening links with jurists, lawyers and medical associations. In reviewing progress, it would be useful to attempt to engage those who may not be supportive of the Yogyakarta Principles and who do not share a commitment to LGBTI rights. This would enable a dialogue engaging a variety of views from religious leaders, parliamentarians and the judiciary, rather than a monologue involving only those who are already supportive of a rights-based approach.

Several NHRI (e.g. Bangladesh, Mongolia, the Philippines and Thailand) commented on the central role of the family in LGBTI experiences of exclusion and discrimination. The heteronormative nature of many families means that families are perceived as unsafe spaces for many LGBTI people. There was general agreement that the human rights agenda would benefit from NHRI education and awareness-raising programmes that promote greater family understanding and acceptance of LGBTI people.

Colonial history as well as religion influences continued discrimination in law, attitudes and policies. In many former British colonies, such as Bangladesh, Brunei Darussalam, India, Malaysia, Myanmar, Sri Lanka and Singapore, the common law penal codes still criminalize homosexual conduct. Fiji and Hong Kong SAR inherited the sodomy offence from the British penal code but have decriminalized homosexual conduct.

NHRI need to focus not just on laws but also on law enforcement agencies and officials. Several NHRI reported concerns about violations of rights of LGBTI people in police detention and prisons, including exposure to violence and lack of access to health services.

It was observed that NHRI can play a role of provision of safe spaces for LGBTI communities to raise concerns, share experiences and build a sense of community. However, it cannot automatically be assumed that all NHRI provide safe spaces, as not all NHRI are sensitized to LGBTI rights issues.
The language used to label LGBTI people can itself be problematic as some individuals do not identify or relate to the terms used. Culturally appropriate local terms vary across the region. Intersex status is often misunderstood and is an overarching term for several conditions. Individuals who have no words or inaccurate terms to describe their status can feel invisible and disempowered, which contributes to high suicide rates.

**Country updates**

Updates are reported below in alphabetical order by country. Bangladesh and Nepal provided detailed updates through detailed presentations. Other countries provided updates and observations through interventions from the floor. Kazakhstan and Samoa are included here, although they spoke on Day 2.

In **Afghanistan**, LGBTI issues are extremely sensitive and generally not discussed. To describe someone as gay or homosexual is considered deeply insulting. However, there is a strong policy focus on addressing gender inequalities and there are legal protections for women relating to violence and forced marriages.

**Australian** law protects people from discrimination on the grounds of sexual orientation, gender identity or intersex status. The Australian Human Rights Commission is conducting a national consultation to identify areas in which discriminatory or harmful attitudes and practices remain a feature of LGBTI people’s lived experiences, despite the supportive legal framework. The Commission is particularly interested in gathering evidence from people who live in rural and remote areas where levels of knowledge about the specific needs of LGBTI people and acceptance of diversity may be lower than the major urban areas. This includes a focus on improving access to and the quality of health, education and aged care services.

In **Bangladesh**, LGBTI people experience disadvantage in education and employment, and report incidents of violence and abusive treatment by the police including abuses that occur to people detained in jail.

Same-sex sexual activity, whether in public or private, is illegal and punishable with fines and imprisonment up to life. The Penal Code section 377 criminalizes intercourse against the order of nature. In 2009 and 2013, the Bangladesh parliament refused to overturn section 377. The policymakers have decided to tread a cautious middle path such that adults engaged in consensual sex are not to be subjected to harsh punishments of prolonged imprisonment; however, same-sex relationships will not be legalized. Consequently, Bangladesh does not recognize same-sex marriage or civil unions.

The National Human Rights Commission of Bangladesh (JAMAKON) is mandated to provide the Government with recommendations to promote and protect the rights of the child, women and other vulnerable groups. Arguably, this encompasses sexual minorities. The Constitution guarantees equality before the law and equal opportunity to all citizens. Freedom of religion is subject to restrictions based on decency or morality. JAMAKON’s Strategic Plan 2015–2019 includes marginalized and vulnerable populations, including LGBTI communities. JAMAKON’s priorities include: civil society sensitization, public education including programmes for LGBTI communities; coalition and alliance building with the partners of LGBTI groups; economic empowerment; research on the impact of discrimination and violence; engagement of the media and entertainment industry; engagement with government officials; and sensitizing JAMAKON staff members to SOGI issues and building capacity to implement activities using the Commission’s convening and advocacy powers.
The government recognized transgender people’s voting rights in 2009. In 2013 in a landmark decision, the government passed laws to recognize hijras (a transgender community) as a third gender, allowing them to identify themselves as a separate gender in passports and other state documents. However, implementation is slow and hijras are still unable to attain driving licences as a third gender or receive many benefits from government.

In 2014, JAMAKON drafted an Anti-discrimination Act in collaboration with the Law Commission of Bangladesh, which proposes to prohibit discrimination based on sexual orientation. It has been submitted to government but not yet enacted.

In 2012, JAMAKON submitted a report under the UPR process, which stated: “Excluded groups (including Dalits and transgenders) remain some of the poorest people in Bangladesh and face marginalization and discrimination. In addition the NHRC notes that the Government of Bangladesh did not respect the recommendation with respect to sexual minorities. The NHRC understands the need for the law to be in harmony with the cultural and social mores of the people. Nevertheless, the NHRC believes that it is now time to ensure that all groups, including those who are transgender, intersex or sexual minority, are protected from discrimination.”

JAMAKON’s Chairman is active in advocating for the rights of LGBTI groups in Bangladesh and was a speaker at a meeting entitled ‘Human Rights of the Sexual Minorities: Response and Responsibilities’, organized by a community organization for LGBTI people, the Bandhu Social Welfare Society.

JAMAKON uses its existing powers to handle complaints, e.g. intervening in 2014 to ensure a person dismissed because of their sexual orientation in violation of their employment rights was reinstated and provided with monetary compensation.

The opposition to LGBTI rights from deeply conservative elements of the Muslim community is a major barrier. LGBTI communities sometimes experience harassment by vigilante groups supported by the issuance of local fatwas against their existence. Documenting human rights violations makes human rights challenges more visible to government. Media can also play a vital role to sensitize government and the public.

A community survey on SOGI issues was conducted to increase understanding of LGBTI perspectives on access to justice, reporting of human rights violations and engagement with JAMAKON. One hundred LGBTI people took part in the survey, which was led by peers from Bandhu Social Welfare Society. Some 87 percent of respondents experienced rights violations, but only 30 percent were aware of JAMAKON. Respondents requested more information about JAMAKON including how to make a complaint. Recommendations as a result of the survey included that JAMAKON support a media campaign or cultural programme with a non-discrimination message, raise community awareness about JAMAKON’s role and promote the right to health of LGBTI people including those living with HIV, to the police, local political leaders, community leaders, local governments and government agencies including through face-to-face dialogue.

A perception that men who have sex with men are inherently criminal fuels attacks on their dignity and the denial of their equality before the law. For example, the police are often perceived to victimize, extort and blackmail gay and bisexual men caught in public areas. Clients of male sex workers can be subject to extortion. Many men who have sex with men report being raped, gang raped and beaten frequently by police and thugs. The police also sometimes harass, beat and arrest men engaging in HIV outreach work.
A Hijra pride and henna festival was held in 2014, which issued a statement demanding a comprehensive law to address hijra rights including protection from police harassment, rights to information and education, and right to employment. It is important that government officials have an understanding of these issues.

Fiji has made progress through legislative reform including decriminalization of homosexual conduct and introduction of equality and non-discrimination protections. However, there is an apparent ceiling to the tolerance of LGBTI rights. LGBTI visibility is still very difficult because of the influence of conservative Christian and cultural traditions, particularly regarding the role of the traditional family unit in society.

In India, there has been a lack of action on LGBTI rights from parliament. However, there have been interesting decisions on transgender rights from the courts. The Supreme Court has issued two contrasting judgements. The Section 377 judgement in 2013 refused to apply fundamental constitutional rights to decriminalize homosexual conduct, stating that decriminalization is a question for parliament, not the courts. On the other hand, a Supreme Court judgement a few months later found that transgender people do enjoy constitutional rights and the Supreme Court required the government to implement measures in recognition of these rights.

Indonesia’s National Human Rights Commission (Komnas HAM) highlighted the challenge of working in a system in which governance is highly devolved to provincial and district levels. Many rights violations result from discriminatory local laws and practices including police abuses. Although the NHRI can review compliance with national human rights obligations, tensions arise in addressing actions of police and local authorities. Engaging local religious leaders is a challenge. Komnas HAM is pursuing research to map the need for harmonization of laws at different levels of government to be consistent with SOGI human rights. Opportunities for addressing SOGI issues include training police and religious leaders and integrating of issues into the National Action Plan on Human Rights. A research agenda on implementation of the Yogyakarta Principles would benefit from a comparative perspective that identifies lessons learned from across the Asia-Pacific region. Komnas HAM has good relationships with university-based research centres, which could be used to pursue this agenda.

In Kazakhstan, the context of conservative religions means that it is challenging to raise SOGI issues. Kazakhstan is 30 percent Orthodox Christian (mostly of Russian origin) and 70 percent Muslim with both groups sharing a perception of homosexuality as wrong. Sodomy was a crime in Kazakhstan under the Soviet law until 1997. Although this prohibition has been removed, there is no law against discrimination on the grounds of SOGI. The Constitution has a general prohibition against discrimination but there is no direct mechanism for making a discrimination complaint to a court. Anti-gay laws exist in many neighbouring countries and the politics of Russia and its sphere of influence in Central Asia has an effect across the region. There is no regional human rights mechanism for central Asia. In 2014, the national parliament considered proposals (influenced by Russian legal developments) prohibiting homosexuality; however, these proposals have not progressed. In February 2015, a law was adopted to protect children from information that could harm their mental health. There is a phrase in the law about propaganda of ‘untraditional relationships’ but there is no definition of what this means. It is unclear if this will be enforced against homosexual people, but has the strong potential to be used to do so.

Malaysia’s Human Rights Commission is interested in increasing its internal capacity to address SOGI issues in collaboration with civil society. However, these are very sensitive issues domestically, which affects the priority the Commission is giving to these issues. Although the Commission has not established a programme to address SOGI issues, there have been some initial discussions with religious groups.

Malaysia has a dual legal system, in which the common law system operates alongside Islamic laws that apply to Muslim citizens. Homosexuality is criminalized by both systems. The Hudud law of sharia punishes sodomy. The federal structure of government means that each state can develop their own sharia laws that often include offences for homosexual conduct and cross-dressing. There have been recent high-profile court cases including the decriminalization of cross-dressing, although this case remains on appeal. Cultural and religious norms are dominant considerations that impact on the role of the Commission.
Despite these considerable constraints, there is still room to engage with the community in a dialogue and raise awareness in relation to specific issues such as LGBTI rights in education, health and employment. The National Unity Council included sexuality and gender identity among protected groups in a draft anti-discrimination bill developed in 2014. However, this proposal was dropped due to pressure. Malaysia is keen to look to other Asian nations with majority Muslim populations such as Bangladesh and Pakistan for lessons in how to engage sensitively and constructively on SOGI issues.

The Myanmar National Human Rights Commission participates in a legal committee established under the national HIV programme that reviews legislation affecting the HIV vulnerability of key populations. It has received proposals for amendment of Section 377 of the *Myanmar Penal Code* to decriminalize homosexuality. However, the government is concerned to ensure that protection against sexual assaults is not undermined by amendments, so is reviewing proposals carefully. The Myanmar National Human Rights Commission is sensitive to the need to improve internal capacity and has appointed a lesbian staff member.

In Nepal, it has been important for the National Human Rights Commission to work in close partnership with the leading LGBTI organization, the Blue Diamond Society, in community education and practical measures such as introducing a hotline for reporting violations.

For Nepalese LGBTI people, discrimination is experienced from families and local communities (e.g. exclusion from social activities and gatherings), schools, housing and in legal rights in relation to family or ancestral property, marriage and relationships. Police abuses such as unnecessary interrogation are reported including human rights violations perpetrated against LGBTI people when they are in police detention, including extortion, violence and sexual assaults. There are examples of LGBTI people experiencing inhuman and degrading treatment.

The Blue Diamond Society supported a test case on legal equality rights in the Supreme Court, which resulted in the Court issuing a declaration in 2007 that the government is responsible for implementing SOGI equality rights. The Supreme Court order directed the government:

- To identify LGBTI populations and recognize them as a marginalized group;
- To respect their dignified life according to their gender recognition with the issuance of third gender identity; and
- To conduct research to determine what kind of practices and jurisprudence have been developed in South Asian countries and at the global level in relation to equality rights and to develop recommendations based on the research.

However, implementation of the Court order relies on government actions and progress has been delayed due to the volatile political situation. LGBTI issues are not yet included in the equality provisions in the new Constitution although the constitutional prohibition of discrimination on the grounds of gender provides an entry point. Government policy assigns rights to protection from discrimination according to the status of a social group as a ‘minority’. However, there is no accurate and universal definition of a sexual minority. There is some recognition of ‘third gender’ people in policies and programmes although progress is very slow.

A positive development has been the report of the group that was convened to conduct comparative research on international practices and jurisprudence on marriage equality for same-sex couples. The Study Committee for Same-Sex marriage included a medical expert assigned by the Ministry of Health; a representative from National Human Rights Commission; a representative of the Ministry of Law; a sociologist as assigned by the Government of Nepal; a representative of Nepal Police; and a representative of the Ministry of Population and Environment. The report from the Committee recommends legislative action to enshrine LGBTI equality and has recently been submitted to government.

A key challenge is the capacity development of government officials, e.g. in relation to LGBTI inclusion in the census and responding in a timely way to complaints made to government by LGBTI people and their organizations. Education of the judiciary is also important in relation to the 2007 Supreme Court decision.
The response of the Commission on Human Rights of the Philippines has benefited from research on LGBTI issues being conducted by civil society organizations, including two surveys on gender-based violence and evidence of hate crimes. It is important to collect quantitative and qualitative data to illustrate stories of discrimination. The Commission is interested in developing a protocol for addressing hate crimes, and a handbook to educate agencies based on the research. An important opportunity for addressing transgender issues is presented by the national law known as the Magna Carta for Women, which applies obligations arising under the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) domestically.

The NHRIs in the Philippines and Timor-Leste work within social contexts in which the Catholic Church plays a dominant role. This can lead to social rejection and exclusion of LGBTI people from families and communities, e.g. the refusal to allow LGBTI people to participate in religious services on the basis of their non-conforming dress or appearance. Therefore, working with religious leaders is an important strategy if NHRIs are to gain community support in expanding their roles on these issues. In Timor-Leste there is some recognition of diversity in sexual orientation but limited understanding in relation to transgender and intersex issues.

In the Republic of Korea, the response to LGBTI issues is ambivalent. There has been progress in the legal recognition of transgender status as a result of a court decision enabling a transgender person to change their legal registration of gender. However, military laws still discriminate against homosexual men in the context of compulsory national service requirements. LGBTI issues are becoming more mainstreamed within the human rights community and there have been efforts to engage religious communities. There was an extensive process to draft an anti-discrimination law. However, this was defeated, partly as a result of pressure from evangelical Christians.

In Samoa, human rights are dealt with by the Ombudsman’s Office, which has not done any work on LGBTI rights issues as yet because the NHRI is very new. The NHRI was established in 2013 within the Office of the Ombudsman, which recruited three staff with a human rights background in 2014. The focus at this stage is building internal capacity to learn how to address SOGI issues. The Constitution includes a general prohibition on discrimination in legislation based on gender. LGBTI rights are a very sensitive issue because of the dominant role in society of Christian religion and traditional culture. Government and NGOs (particularly the Fa’afafine Association) have had a role in SOGI rights issues. A review of the criminal law led to a new Crimes Act of 2013, which removed the offences of impersonating females (although sodomy remains an offence). Lesbians and gay men are not visible but the transgender community is active and organized through the association representing transgender people, the Fa’afafine Association. The Prime Minister is Chair of the Fa’afafine Association. Equal rights are enjoyed to employment and freedom of association. However, same-sex marriage is controversial.

In Sri Lanka, the criminal law is based on the British penal code and remains discriminatory. A review of the law intended to update its provisions resulted instead in criminalization of lesbian sexual conduct as well as male-to-male sex, rather than decriminalization of male-to-male sex. The situation regressed rather than improved. A focus on changing attitudes is required before further law reform will be supported. Engaging the military as well as the police will be required.
Summary of proceedings: Day 2

South–South learning

The Inter-American Commission on Human Rights

The Inter-American Human Rights System comprises the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court on Human Rights. The Rapporteurship for LGBTI Rights is located within the IACHR.

The pillars of work of the IACHR relate to the individual petition system, monitoring of human rights in Member States, and priority thematic areas. Monitoring methods include site visits, annual reports, country reports, thematic hearings and country rapporteurships. Priority thematic areas are addressed through rapporteurships, thematic reports, site visits and case reports.

There have been seven General Assembly Resolutions of the Organization of American States on Human Rights, Sexual Orientation, Gender Identity and Gender Expression since 2008. These resolutions came about as a result of the work of the Coalition of LGBTI Organizations of the Americas. The 2011 resolution called for public policies against SOGI-based discrimination and the IACHR was asked to prepare a hemispheric report on SOGI rights issues. The 2012 resolution called for States to eliminate barriers in access to political participation and to other areas of public life and to prevent interference in private life, and called on IACHR to prepare a study on laws restricting rights and on guidelines aimed at promoting decriminalization of same-sex intimacy. The 2013–2014 resolutions encompassed gender expression as well as sexual orientation and gender identity. Further, States were urged to afford protection to intersex people, to implement policies and procedures to ensure medical practices consistent with human rights standards, and to produce data on homophobic and transphobic violence.

The IACHR’s LGBTI Unit was created in 2011. Activities of the Rapporteurship in 2013–2014 included convening over 30 hearings, petitions and cases, thematic reports, monitoring and visibility (e.g. use of social media including reaching over 900,000 people on Facebook), and technical advice to States. A formal dialogue with OAS Representatives and Ambassadors on Sexuality and Diversity was held in 2014.

Activities of NHRIs in Latin America and the Caribbean have included:

- Provision of information to the IACHR on human rights violations;
- Convening or participating in public hearings;
- Establishing specialized units or offices for the protection of LGBTI persons (Guatemala, Nicaragua and Venezuela);
- Training of police and law enforcement agents on LGBTI rights (Costa Rica, Nicaragua and Venezuela);
- Inclusion of SOGI as an indicator for data collection purposes in complaint forms for NHRIs (Guatemala and Venezuela);
- Press releases or public statements about LGBTI discrimination cases (Colombia, Ecuador and Peru);
- Documentation of LGBTI rights violations in several reports (Mexico);
- Monitoring of ministries of education, health and families regarding discrimination against LGBTI persons (Nicaragua); and
- Awareness campaigns and initiatives (Costa Rica, Mexico, Nicaragua and Venezuela).

The ASEAN SOGIE Caucus

The non-government organisation, the International Gay and Lesbian Human Rights Commission (IGLHRC), presented on advocacy to the ASEAN Intergovernmental Commission on Human Rights (AICHR) through the ‘SOGIE Caucus’. The ASEAN SOGIE Caucus is a network of human rights activists that aims for the inclusion of SOGIE in ASEAN human rights mechanisms in order to promote and protect the human rights of people regardless of
SOGIE in the Southeast Asian region. The SOGIE Caucus was formed in 2011 in response to the inclusion of LGBTI issues in the ASEAN People’s Forum in Viet Nam in 2010 and in response to the events in Surabaya in 2010 when fundamentalist Muslims disrupted the International Lesbian and Gay Association Asia conference, resulting in the cancellation of the event.

AICHR was established in 2009 covering the ten ASEAN member states (Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam). Five ASEAN member states have NHRIs (Indonesia, Malaysia, Myanmar, the Philippines and Thailand). AICHR has a promotion mandate and was mandated to develop the ASEAN Human Rights Declaration, agreed in 2012. SOGIE issues were raised by civil society in the AICHR consultations on the ASEAN Human Rights Declaration.

The SOGIE Caucus produced a video as part of a campaign to have SOGIE issues included in the ASEAN Human Rights Declaration; however, the campaign was not successful. SOGIE issues were not included in the ASEAN Human Rights Declaration, ASEAN Declaration on the Elimination of Violence Against Women and Violence Against Children, or the ASEAN Declaration on the Rights of Migrant Workers. In 2012, Malaysia’s representative to the AICHR declined to support inclusion of SOGIE issues.

The SOGIE Caucus is hoping to host a SOGIE Workshop in Malaysia in 2015, as part of the ASEAN People’s Forum, although there have been security concerns around this event.

Ratification of international human rights treaties is patchy in ASEAN member states. However, obligations to address SOGIE issues arise because all ASEAN member states have ratified the Convention on the Rights of the Child (CRC) and CEDAW. Under CEDAW, two General Recommendations have identified SOGIE discrimination and stated that it must be prohibited and addressed under States’ CEDAW obligations (CEDAW/C/2010/47/GC.1 & 2). Under CRC, General Comments have mentioned sexual orientation as a category protected from discrimination (CRC/GC/2003/3 p. 3) (CRC/GC/2003/4 p. 2).

The SOGIE Caucus is calling on ASEAN States to harmonize domestic laws with the Yogyakarta Principles, with the following current priorities:

- Repeal laws criminalizing homosexual conduct (i.e. section 377 or its equivalent) in the Penal Codes of Brunei Darussalam, Malaysia, Myanmar and Singapore;
- Repeal laws that criminalize same-sex relations in Malaysia and Indonesia (Aceh Province);
- Remove lesbianism and homosexuality as deviant acts in the Anti-Pornography Law of Indonesia;
- Remove laws banning cross-dressing in Brunei Darussalam, Indonesia and Malaysia;
- Enact laws allowing sex reassignment surgery (Brunei Darussalam, Malaysia, and Viet Nam);
- Legalize name and gender change for transgender people, (Malaysia, Philippines, Thailand and Viet Nam); and
- Enact the Anti-discrimination Bill in the Philippines.

The SOGIE Caucus is advocating for greater AICHR transparency, government policies to depathologize SOGIE, and the provision of full and equal access to health and social services. The Caucus has been strengthening alliances with advocates for other issues such as children and women’s rights, disability rights and migrant rights.

The SOGIE Caucus also opposes discriminatory government actions, e.g. the Malaysian Government’s publication of guidance on how to identify LGBTI students according to their dress or appearance. At the regional level, the governments of Brunei Darussalam, Malaysia and Singapore mount strong opposition to the recognition of LGBTI rights. Indonesia and Thailand have been allies, and the Philippines is sometimes also supportive.

The SOGIE Caucus is advocating for AICHR to be more transparent and to strengthen its engagement and consultations with LGBTI civil society organizations. SOGIE issues are highly dependent on the country representative who sits on AICHR. The SOGIE Caucus is looking to NHRIs to advocate to AICHR for inclusion of SOGIE issues in their work.
Potential entry points for advocacy include the ASEAN Civil Society Conference/ASEAN People’s Forum 2015 (inclusion of SOGIE in the formal meeting statement), the ASEAN Secretariat and ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), inclusion on the agendas of the broader ASEAN meetings that include other countries, e.g. ASEAN+3 or ASEAN+6, and the corporate social responsibility agenda of the private sector, which is a focus of AICHR.

### ASEAN Intergovernmental Commission on Human Rights

The Indonesian representative to AICHR noted that Timor-Leste is applying to become an ASEAN /AICHR member. The Commission comprises member governments. In the case of the Inter-American system there is a separate political body (Organization of American States) and human rights body (IACHR). AICHR is both a political body and human rights body, and decisions are reached by political negotiation, consultation and consensus rather than voting.

ASEAN Foreign Ministers first proposed a regional human rights mechanism when the Vienna Declaration of Human Rights was issued in 1993. When the ASEAN Charter was agreed in 2006, ASEAN states agreed to establish a regional human rights body. Following on from this decision, two ASEAN commissions were established in 2009–2010 on human rights and in relation to women and children.

ASEAN comprises three areas of cooperation: the political and security community, the economic and investment community, and the social and cultural community. Human rights are a cross-cutting theme for these pillars of cooperation. Human rights issues are being incrementally mainstreamed into the three pillars of cooperation and the language of ASEAN.

Member states have not given AICHR a mandate to receive and investigate complaints, conduct visits or inquire into or investigate country situations. Rather, it has the functions of setting standards and building the capacity of officials of ASEAN and ASEAN member states. AICHR addresses ‘vulnerable groups’ in the context of standard setting. Monitoring focuses on thematic issues, which currently are defined as migrants’ rights, trafficked people, women and children, and vulnerable groups. Indonesia has proposed that SOGIE populations be addressed as an ‘other’ population within the concept of ‘vulnerable groups’ in the ASEAN Declaration on Human Rights; however, this has not yet been agreed. The ASEAN Declaration reaffirms commitment to the Universal Declaration on Human Rights and the Vienna Declaration and Programme of Action.

Consultations on the review of AICHR’s Terms of Reference occurred in 2014. Foreign Ministers are due to consider the recommendations of the review report. It would be useful for civil society to advocate with ASEAN on the review of the Terms of Reference. Civil society is invited to submit proposals for issues to be included in ASEAN’s Post-2015 vision and action plan. Other entry points for addressing SOGIE within ASEAN are the right to health and non-discrimination, including zero discrimination in the context of HIV through the ASEAN Taskforce on HIV and AIDS.

### South Asian Association for Regional Cooperation in Law

The South Asian Association for Regional Cooperation in Law (SAARCLAW) comprises lawyers, judges, law officers of governments and others from the eight South Asian nations. SAARCLAW’s objectives are to develop cooperation, understanding and exchange ideas, and to use law as an instrument for social change.

Until 2011, SAARCLAW’s human rights priorities were primarily children’s rights and women’s rights. In 2011, the SAARC Secretariat introduced SAARCLAW to the UNAIDS Secretariat and a Memorandum of Understanding was signed with UNAIDS, UNDP, IDLO and the World Bank with a focus on legal and policy barriers to HIV responses and how these barriers impact LGBTI rights. As a result, SAARCLAW has engaged in a series of initiatives on HIV and the rights of men who have sex with men and transgender people.
Within SAARC, Maldives and Pakistan have voted against SOGI resolutions and India has abstained. This contradicts the SAARC Guidelines, which talk about protection of LGBTI rights. This indicates the need for education.

SAARCLAW seeks to influence the mindsets of judges in the area of LGBTI rights. Human rights as enshrined in national constitutions can be interpreted to protect LGBTI rights. Office bearers of SAARCLAW are influential in the governments and the judiciary of the member states.

Parliamentarians of South Asian States have generally not legislated to protect LGBTI rights, so SAARCLAW has focused on educating the judiciary. The annual SAARCLAW Conference was organized to coincide with the Chief Justices Conference so that all Chief Justices could listen to the voices of the vulnerable including LGBTI people. The judiciary can be powerful lawmakers in South Asia as they are able to change the law through declaratory orders.

The initial judgement of the Delhi High Court in the case on section 377 of the Penal Code is an example of the potential role of the courts in changing laws. The Delhi High Court in effect decriminalized homosexual conduct by reading down section 377 to be consistent with the Constitution of India. The decision of the Supreme Court that subsequently overturned the Delhi High Court decision was a setback.

**Monitoring human rights situations**

**Successes and challenges faced by LGBTI communities: New Zealand**

The New Zealand Human Rights Commission conducted an Inquiry into discrimination against transgender people in 2008. The process of obtaining community submissions created an extensive evidence base and built relationships with and between transgender communities. The Inquiry looked at experiences of violence and discrimination in health, education and other areas of life for male and female transgender people from diverse ethnic and social backgrounds. Some intersex issues were also addressed.

At the early stages of the Inquiry, transgender people did not want to be public about their status, but by the time the Inquiry was finished most were comfortable to be identified. Meetings were held with indigenous Maori in their traditional meeting spaces. The Commission placed an emphasis on media visibility and public education accompanying the Inquiry process. The Commission was concerned about the sensitivity of addressing transgender children’s rights, but the media coverage of transgender children was actually very positive.

Implementation of the recommendations of the Inquiry included:

- A change in policies relating to gender identity on drivers licences and passports (allowing a choice of M, F or X). The Commission succeeded in having the Yogyakarta Principles included in the cabinet papers to inform the decision on drivers licences;
- A public education programme and an exhibition in five public galleries around New Zealand to raise the profile of the Inquiry;
- Human rights training for transgender people including treaty reporting; and

The number of complaints received by the Commission increased after the Inquiry, indicating greater awareness of rights and redress mechanisms in the community. Challenges included maintaining political commitment in the context of changes in government, and the demand on staff resources of the Human Rights Commission as the workload increased, due to greater awareness of the issues in government and the community.

The Commission is mainstreaming sexual orientation, gender identity and intersex (SOGII) rights into its work, e.g. pre-employment guidelines for employers and employees.
The Commission supported government agencies to produce resources, e.g. the Department of Labour’s policy on Transgender People at Work; created dialogues and wrote submissions on systemic issues, e.g. transgender people in prison; trained policy staff in government agencies on SOGII issues, e.g. people who assess refugee applications; and supported transgender people's participation in guidance for health professionals.

The Commission has had limited engagement on intersex issues. The role has mainly been to provide neutral spaces for intersex people to raise issues through two roundtable discussions. Neutral spaces are important because there can be tension between intersex adults, parents and health professionals.

The Commission also played a role in marriage equality debates by engaging in dialogue with gay community and faith-based organizations regarding the rights to freedom of expression, freedom of religion and freedom from discrimination.

The Commission works closely with gay, transgender and intersex communities and arranges meetings between these communities and government agencies. Resources have been developed to support the work of SOGII community-based organizations in schools.

The Commission does not have investigative powers but does conduct mediation to resolve complaints, which is seen as a less costly option than litigation.

The Commission could benefit by being linked to regional projects and shared interests, e.g. through the ‘Being LGBT in Asia’ regional initiative, and the Asia and Pacific Trans Health Blueprint.

Community outreach is focused on the issues and events that are important to SOGII communities, e.g. Transgender Day of Remembrance and Pink Shirt Day.

The Government of New Zealand made the following statement at the adoption of its UPR report at the Human Rights Council in 2014:

“The New Zealand Government is aware that some issues raised by the Human Rights Commission and NGOs in their UPR submissions were not reflected in the interactive dialogue and Working Group recommendations, for example issues around legal abortion and the rights relating to sexual orientation, gender identity and intersex people. We intend to follow up on these issues separately as part of our commitment to ongoing engagement with civil society on the UPR.”

The low level of knowledge by States about transgender and intersex issues is a challenge in using the UPR or treaty processes for advocacy. The UPR process provides opportunities for linking SOGII organizations with other civil society organizations, e.g. children’s rights organizations interested in intersex issues. The Commission is exploring intersections between SOGII and other human rights issues, e.g. children’s rights and forced sterilization for people with disabilities. Treaty bodies and Special Rapporteurs are helping to make the links, e.g. between the Convention Against Torture and sterilization of intersex people or as a requirement for gender recognition.

The Human Rights Commission supported SOGII groups to come together through a videoconference and a Facebook page. The SOGII Coalition's online video was used to summarize their UPR submission including a video presentation to the UN Human Rights Council.

**Success and challenges in monitoring SOGI human rights: Indonesia**

Indonesia has been transformed from an authoritarian system to a democracy. Governance has been decentralized to 600 districts and municipalities. Economic development goes hand in hand with improvements in social acceptance and tolerance.
The National Commission on Human Rights (Komnas HAM) receives 7,000 human rights complaints per year and it is stated that 75 percent of complaints are resolved. Police abuses give rise to many complaints. Businesses and local authorities are also key perpetrators of abuses.


The Indonesian government has identified overarching national priorities for 2014–2019. Priorities relevant to SOGI include:

• Strengthening the spirit of ‘unity in diversity’ and social reform: promote tolerance, enforce the law to improve people’s spirits of social solidarity, social restoration to restore the spirit of harmony among citizens, strengthen diversity education and create spaces for dialogue between citizens;
• Returning the state to the task of protecting all citizens and providing a safe environment, including building a professional police service;
• Developing clean, effective, trusted and democratic governance: require all government institutions to produce performance reports; open access to public information and public participation; reform the bureaucracy; improve public services;
• Increase women’s participation;
• Developing Indonesia’s rural areas: improve public services in villages and districts, structuring new autonomous regions for the welfare of the people;
• Reforming law enforcement agencies and the judiciary;
• Build a culture of law;
• Improve quality of life: increase educational and training quality;
• Increase public health services through the ‘Healthy Indonesia’ card programme; and
• Promoting economic independence and financial inclusion.

The Yogyakarta Principles are supportive of high social cohesion, which is characterized by inclusion, rule of law, democratic values, access and equal opportunity, an efficient and non-corrupt bureaucracy, and an open society.

Success and challenges in monitoring SOGI human rights: Australia

The Australian Human Rights Commission Act requires the Commission to adhere to and observe international human rights treaties that guide its research, policy and conciliation functions. The Commission has the power to resolve individual human rights and discrimination complaints through conciliation. Complainants do not have to go through formal court hearings and can access the alternative dispute resolution mechanism of conciliation provided by the Commission at no cost. This function of receiving and conciliating complaints links to the Commission’s monitoring function, as the Commission keeps records of the number and type of complaints received on SOGI and other issues. This enables the Commission to report to Parliament and the public on the human rights issues regularly faced by communities.

Australia’s Sex Discrimination Act was amended in 2013 to cover sexual orientation, gender identity and intersex status. The Commission has engaged in public education to raise awareness of these new provisions. As it is a new law, as yet there have been few formal complaints received. Similar laws have existed at the sub-national state level for many years, but relatively few complaints have been received under those laws as well. It is unclear if the low level of SOGI complaints indicates that people are unaware of the law or that discrimination is not occurring. It remains unclear to what extent these laws have a positive impact in preventing discrimination.
The Commission has the power to intervene in court cases, which it has used in relation to some SOGI issues, e.g. intervening in a High Court case on the interpretation of the Gender Reassignment Act of the state of Western Australia so that a person could be recognized as a particular gender. The Commission can propose improvements to laws relating to human rights through submissions to the parliament or the courts.

The Human Rights Commissioner has an amicus power that can be used to assist the courts to interpret new laws such as these SOGI provisions, and thereby inform jurisprudence on these issues as complaints not settled by conciliation come before the courts in the future.

The Commission also promotes improved policies and standards, and conducts research to inform policies and programmes. For example, it published the *Sex Files: The Legal Recognition of Sex in Documents and Government Records* report in 2009, which addressed how sex and gender are addressed in official documents. This led to amendments to federal and state law. The Commission also conducts national advocacy on public policy issues that draws attention to SOGI rights issues.

The Commission has power to conduct national inquiries to bring attention to issues of concern. In 2007, the ‘Same-Sex: Same Entitlements’ Inquiry addressed the equal treatment of same-sex couples in relation to employment and financial entitlements. This resulted in changes to 100 areas of law to ensure equality in these areas.

NHRIs have a special function in providing a link between civil society and the state. Many people from SOGI communities are wary of the state and do not trust government or the police. At the state level, there are attempts to expunge past criminal records relating to homosexuality. LGBTI people are diverse in their class, cultures, geography and age. It is important when designing consultations that differences within communities are recognized.

The Commission’s current national consultation on SOGI issues is examining laws, policies and practices of government that unduly restrict SOGI rights. The Commission is gathering qualitative information to determine what more can be done to protect SOGI rights. The Commission is making a particular effort to consult with rural, regional and remote communities who often do not have the support services they need to be open about who they are and to be safe. Data has been collected through an online survey completed by 1,500 people and written submissions as well as consultation meetings. A discussion paper is available and a report will be issued in April 2015. The Commission will seek to address not just issues of law but also working through education and medical systems to address SOGI rights issues.

The Commission has worked with different arms of the medical community in drawing attention to the ability of young transgender people to access hormone therapy as part of their gender affirmation process. The Commission has also been working with business, civil society and sporting groups on strategies to bring about change.

The Human Rights Commissioner engages in dialogue with Australia’s diverse religious communities on controversial issues such as marriage for same-sex couples and transgender rights issues. This has required engaging with Christian, Muslim, and Jewish communities in a respectful dialogue. Experience demonstrates that it is not very successful to appeal to religious scripture as a basis for argument, but rather it is more effective to appeal to common humanity, to make it clear that we are talking about law not religion, and to engage in a conversation about the appropriate role of religion in a pluralist society. A free and open society is necessary if people are to exercise moral judgements.

The Commission also works with UN bodies such as treaty bodies and the UPR in the Human Rights Council, which allows it to report on its monitoring function to the international community.
**Discussion points**

Myanmar raised concern about segregation of prisoners on the grounds of sexual orientation, which can potentially be a violation of rights but may be required to ensure protection from violence. Participants observed that if segregation for LGBTI prisoners is essential for safety and security, it may be justified. This can require balancing the right to safety and the right to rehabilitation in prisons. Segregation can be used in illegitimate ways and may in effect reduce rehabilitation options and, as a result, may delay access to parole. It is important in any consideration of segregation to talk to the LGBTI prisoners to hear their views. It may be helpful for NHRIs to assist in providing input to standards or guidelines for prison departments and police.

There are also concerns regarding the impact on transgender people of segregation of patients in hospitals according to gender. Civil society partners are currently drafting the Asia Pacific Trans Health Blueprint. It will address health care issues and NHRI roles.

Indonesia’s Commission on Violence Against Women uses the CEDAW framework to guide its work. CEDAW General Recommendation 28 refers to SOGI as an intersectional issue. It is a crucial step for NHRIs to link SOGI issues to CEDAW. The format of case documentation focuses on sexual and gender-based violence. Indonesia’s Commission on Violence Against Women works with nine different LGBTI groups to inform this work. Opportunities for transgender women to use national gender equality laws for protection could be explored.

UNDP worked with UN Women to support civil society groups representing lesbian, transgender and bisexual women in China to submit a shadow report to the CEDAW Committee. Civil society made oral statements to the CEDAW Committee. The formal written observations did not include mention of SOGI issues. However, as a result of the shadow report, for the first time a Chinese Government official stated in public that the Government of China recognizes the rights of all citizens regardless of SOGI and that there will be support to LGBTI NGOs to be registered.

The Government of the United States has human rights officers in its embassies and since 2011, these officers are required to report annually on progress towards achievement of the human rights of LGBT people. Therefore, it is important for embassies to hear from NHRIs and civil society about progress on these issues.

Monitoring is required to ensure evidence-based responses to the human rights situation of diverse SOGI people. Amicable visits can be an important monitoring strategy. It could be useful for the Southeast Asia National Human Rights Institutions Forum to prepare a collective report to reflect the situation of SOGI rights and this could be a source of dialogue to be proposed to AICHR or discussed in a roundtable.

At the Inter-American level, there is a regional convention on violence against women. IACHR had made it clear that lesbian, bisexual and transgender women are able to seek protection under this convention. There is a regional network coordinating the 15 NHRIs in Latin America and the Caribbean, which meets periodically for regional dialogues. On the issue of prisoners’ rights, a recent case at the Inter-American Commission on lack of compliance by the Government of Colombia to ensure intimate partner visits for a lesbian prisoner may be a useful precedent.

**Advocacy**

**Community assessment of NHRI’s role in advocacy: the Philippines**

LGBT groups such as the TLF Sexuality, Health and Rights Educators Collective Inc. (TLF SHARE) have partnered with the Commission on Human Rights of the Philippines (CHRP) in supporting the Anti-Discrimination Bill. LGBTI groups played a central role in advocating for an Anti-Discrimination Bill since a first draft was developed
in 1999. A comprehensive version of the Bill includes LGBT issues as well as other considerations such as age, disability and gender. The Bill includes punitive and preventive measures and support to diversity programmes.

The Bill has met with firm opposition from religious groups. Although there is strong resistance to the Bill, the situation is evolving and some progress is occurring. The Philippines is a very religious society, but a recent survey by a national polling firm found 85 percent of Filipinos support equality rights for LGBTI people.

There is generally a good relationship between CHRP and LGBTI groups and there has been collaboration in areas such as developing SOGI indicators, improvement of documentation processes and sensitization of staff members. Identification of SOGI focal persons for case referrals has been important.

The CHRP is not a monolithic body and sometimes difficulties occur. It is an ongoing process of engagement and future changes in leadership of the Commission may prove challenging. LGBTI organizations have provided training to the Commission’s staff and are hoping to institutionalize reforms so that good practice in relation to SOGI issues is not personality dependent. The CHRP has a special policy on HIV and human rights and it is hoped a special policy can also be developed for SOGI.

Use of an HIV framework can be limiting in advocacy. HIV should not be the only measure by which to define the relationships of LGBTI people with the state. The agenda for LGBTI people is one of full citizenship rights, not just health rights. The HIV focus tends to limit the role of the state to mitigating behavioural risks rather than supporting full citizenship entitlements.

At the regional level, it would be useful if decriminalization could be tackled by APF members collectively, given the large number of countries covered by APF that still criminalize homosexual conduct. Structural issues such as culture and religion should not paralyse NHRIs in addressing SOGI rights issues.

Civil society participants expressed their hope that NHRIs will feel pressured to action. Barriers to action such as religion have been repeatedly identified at prior APF meetings. Civil society is willing to collaborate, but NHRIs are called on to take the lead.

Advocacy for creating an enabling legal environment: the Philippines

The Commission on Human Rights of the Philippines works closely with civil society to document cases and advocate for an enabling legal environment for LGBTI people.

In the Philippines, 85 percent of the population is Christian and religion affects how sexuality is addressed in laws and policies. The Constitution enshrines the role of the family as a central social institution. It has been difficult to pass laws on reproductive health and discrimination. Religious bodies oppose the Anti-Discrimination Bill because of the concern that it will be an entry point for marriage equality for same-sex couples, which religious bodies do not accept.

The Philippines has been rated high compared to other countries in the gender equality index and was among the most ‘gay friendly’ of Asian countries in a recent survey. However, there are many reports of hate crimes, stigma and gender-based violence against LGBTI people, acts of discrimination in the workplace and education settings, bullying, harassment, and restriction of gender expression. Requirements to wear a school uniform can be an issue for lesbian women. LGBTI people are also excluded from social protection policies.

CHRP has formally documented only sixteen LGBTI cases so far, although anecdotally discrimination is thought to be common. Philippine Hate Crime Watch compiled records of 150 hate crime cases involving LGBTI victims since 2010 from media and community reports, but these have been difficult for the CHRP to verify. Several active LGBTI organizations have conducted research on violations of rights. ACHIEVE, TLF SHARE and Rainbow Rights have conducted research on gender-based violence. GALANG conducted research on exclusion of lesbians,
bipolar women and transgender men from social protection policies and laws. Research was presented to the CHRP. Policy changes still needs to happen in these areas to promote equality and reduce discrimination.

TLF SHARE has provided training and capacity-building on SOGI and HIV issues for CHRP investigators, lawyers and information officers.

The CHRP acted as amicus curiae in the Supreme Court case that upheld the right of Ang Ladlad to be registered as a political party. It should be noted that although the party won the case, it has recently been delisted by the Commission on Elections due to the party unable to obtain sufficient voter support to be listed as an official party.

CHRP works with the Department of Interior and Local Government to develop gender and SOGI modules and to conduct trainings of trainers. Local leaders are resistant to addressing LGBTI issues and gender equality between males and females, so education is required.

Gender Ombud Guidelines are under development based on the Magna Carta of Women passed in 2009, which designates the Commission as the Gender and Development Ombud. CHRP is seeking to address the rights of women, children and SOGI diverse populations in these Guidelines. Consultations on how to address SOGI and other gender issues are being held with civil society, the Department of Education, the Department of Employment, the Commission on Women, local government, the Office of the Ombudsman and the Civil Service Commission. Investigation protocols are also being drafted for sensitive handling of cases.

The current Chair of the CHRP, Etta Rosales, was the proponent of the 1999 Anti-Discrimination Bill when she was in Congress. There are now two versions of the Bill. A version of the Bill addressing only SOGI issues has recently passed the Women’s Committee. A version of the Bill covering all grounds (SOGI, gender, disability, ethnicity, age etc.) is awaiting approval from the Human Rights Committee. CHRP supports both versions of the Bill and has conducted dialogues bringing together different disadvantaged groups to develop alliances and share experiences of marginalization. CHRP has supported the establishment of a working group as a coalition to push and strategize for the passage of the bill.

Parallel to national efforts, the CHRP works with local government units to engage in dialogue with local leaders and community members to support passage of local or municipal Anti-Discrimination Ordinances.

Challenges include the changing membership of the CHRP as new Commissioners are appointed, trying to mainstream SOGI across the work of CHRP and its commissioners, lack of knowledge and engagement of other national government agencies on SOGI and LGBTI issues, and opposition from religious leaders and some members of Congress. There is a lack of unity among different proponents of the Comprehensive Anti-Discrimination Bill, with some ethnic minorities wanting to exclude SOGI from the Bill so that the Bill can pass in Congress. Legal barriers include court decisions preventing change in registration for transgender people and uncertainty on the applicability of the Magna Carta on Women and CEDAW provisions to transgender issues. For example, the Philippine Commission on Women has argued that the Magna Carta on Women is restricted to biological women.

**Advocacy for creating an enabling legal environment: Republic of Korea**

The National Human Rights Commission of Korea has legal responsibilities in relation to gender equality and responding to discrimination based on sexual orientation, and is active in monitoring LGBTI rights. Article 2(3) of the National Human Rights Commission Act states that the Commission has a role in relation to discriminatory acts based on gender, sexual orientation and numerous other grounds. The Commission identifies laws and regulations that need to be amended to comply with non-discrimination requirements.
A challenge that urgently needs to be addressed is the military offence of homosexual conduct. Men are required to serve two years of compulsory military service. Article 92(6) of the Military Criminal Law defines consensual sexual activities among persons of the same sex in the military as indecent sexual assault with prison penalties. In 2011, the Constitutional Court upheld the legal validity of this Article on the grounds of ensuring discipline and morale in the military, but the Commission remains concerned about its discriminatory impact.

The Commission includes LGBTI issues in human rights education courses provided for public officials, teachers, police and journalists. The Commission has made recommendations in the following areas to remove discriminatory provisions:

- Discrimination against sexual minority groups in using local government facilities (2012). Local authorities provide information to the community by displaying banners or placards with news about local events. An LGBT group requested that these banners include reference to the 10 percent of local residents belonging to sexual minority groups. Officials in local government refused the request. Their decision was based on prejudice and a misunderstanding of SOGI issues, and the Commission opposed it.

Human rights experts and citizens assisted drafting the Seoul City Human Rights Convention in 2014. The draft Charter included the right to not to be discriminated against based on sexual orientation or identity. However, under pressure from religious groups, the Mayor rejected the Charter. LGBTI groups then conducted a high profile sit-in protest event in the city to bring publicity to LGBTI rights issues.

Another recent issue was the withdrawal of budget support of USD$55,000 in 2014 to an LGBTI community project, the Youth Rainbow Support Centre. It was intended to provide counselling and support, but the local government withdrew support, based on complaints. The evangelical churches also played a leading role in preventing progressive human rights laws from being enacted that would have supported LGBTI rights. The draft Anti-Discrimination Law was withdrawn in 2013 and the Human Rights Education Law was withdrawn in 2014.

The Commission’s education and awareness raising activities are used to address SOGI-related discrimination. In 2014, the Commission met with LGBTI communities and activists to identify their priority concerns to incorporate in the Commission’s fact-finding research to be published in 2015. Positive changes are possible and new bills have been drafted to modify the discriminatory article in the Military Criminal Law and to introduce a Student Human Rights Ordinance. Courts have ruled in recent years to prioritize psychological and social factors over biological in addressing the rights of transgender people to reassign their documented sex in official documents. Data from the Pew Research Centre on public attitudes to same-sex marriage confirm a rapid change in views, with support rising from 18 percent in 2007 to 39 percent in 2013. It is thought that a significant factor is the impact of a TV drama aired in 2010 that covered the rights of homosexual people and the impact of discrimination.

The Commission surveys newspaper and TV coverage of issues of sexual minorities and their discrimination to determine their role. Attitudes are changing and evolving, so the Commission is hopeful for progress despite obstacles.

**Discussion points**

Experience of court decisions across Asia has been extremely varied. For example, in the Republic of Korea there was tension around the case that challenged the actions of government in censoring all gay and lesbian websites. The court found that the censorship was not unlawful. However, the Human Rights Commission issued an opinion stating there had been overreach by government in the censorship of websites. The Government of the Republic of Korea subsequently accepted the NHRI position, in effect overruling the court decision.

The judgement of the case of the Supreme Court of the Philippines that denied transgender people the right to change their identity in documents began with quotations from the Bible and the Koran. This raises the question...
of whether courts and governments are secular. When the Ang Ladlad case was considered by the Supreme Court, there was concern that the Court would again base its decision on religious grounds following the transgender case. However, the Court’s decision in the Ang Ladlad case was among the strongest pro-LGBTI decisions in Asia.

In India, health was the entry point for the Delhi High Court decision (which decriminalized homosexuality until the decision was later overturned by the Supreme Court). There had been a split between the Ministry of Justice seeking to uphold the sodomy offences and the National AIDS Control Organization (NACO) that opposed the criminal law on the grounds that it made HIV prevention and delivery of health services more difficult. The Supreme Court judgement made the surprising statement that the sodomy law only affects a “miniscule section” of the population.

Many of the provisions of human rights laws enable NHRIs to intervene in cases as amicus curiae to help courts to interpret the law. These powers should be used more frequently to address SOGI issues.

**Programme of Action and Support**

Over the course of the workshop, participants broke into groups and devised actions that NHRIs could consider undertaking in relation to capacity-building, research, education, promotion, dialogue, monitoring and advocacy that are consistent with their human rights mandates. UNDP and APF also offered practical support to NHRIs. These actions and offers of support are captured in the following Programme of Action and Support by NHRIs in relation to promoting and protecting the rights of people who are lesbian, gay, bisexual, transgender and intersex.
Annex 1

Programme of Action and Support

On 24 and 25 February 2015, the United Nations Development Programme (UNDP) and the Asia Pacific Forum of National Human Rights Institutions (APF) organized and co-sponsored a workshop on the Role of National Human Rights Institutions (NHRIs) in Promoting and Protecting the Rights, including Health, of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People in Asia and the Pacific. The workshop was convened with support from the ‘Being LGBT in Asia’ programme – funded by UNDP, USAID, the Embassy of Sweden in Bangkok and the Multi-Country South Asia Regional HIV Programme funded by the Global Fund to Fight AIDS, Tuberculosis and Malaria. The workshop was organized in cooperation with the Asia Pacific Coalition on Male Sexual Health (APCOM), and held at the United Nations Convention Centre in Bangkok, Thailand.

The workshop included:

- Representatives of APF members including the NHRIs of Afghanistan, Australia, Bangladesh, India, Indonesia, Kazakhstan, Malaysia, Mongolia, Myanmar, Nepal, the Philippines, the Republic of Korea, Samoa, Sri Lanka, Thailand and Timor-Leste;
- Representatives of UNDP and UNAIDS;
- Representatives of civil society including APCOM, ASEAN SOGIE Caucus (ASC), TLF Share Collective, the International Gay and Lesbian Human Rights Commission (IGLHRC), Transaction and South Asian Association for Regional Cooperation in Law (SAARCLAW);
- Representatives of Komnas Perempuan, Indonesia;
- Representatives of governments including the United States of America and Sweden;
- Representatives of regional bodies including the ASEAN Intergovernmental Commission on Human Rights;
- Expert individuals; and
- Representatives of the APF secretariat.

The workshop was facilitated by two Co-Chairpersons:

- Professor Vitit Muntarbhorn, International Human Rights Expert and Professor of Law, Chulalongkorn University, Thailand;
- Adjunct Professor Chris Sidoti, International Human Rights Expert, Australia.

The objectives of the workshop were:

1. To discuss the engagement of NHRIs in the region in the promotion and protection of the human rights of people of diverse sexual orientation and gender identity in light of the Yogyakarta Principles and the progress achieved in implementing the recommendations of the APF’s 2009 Yogyakarta Principles Meeting and the Advisory Council of Jurists Report of December 2010, as well as recommendations from the Regional Report on the Capacity of National Human Rights Institutions to Address Human Rights in Relation to Sexual Orientation, Gender Identity (SOGI) and HIV.


3. To identify needs for capacity-building, training, regional exchanges of experiences and other support that may be included in forthcoming regional development programming, and to make recommendations to UN bodies and other development partners accordingly.

The following actions were recommended for careful consideration by NHRIs, recognizing that NHRIs operate in varying cultural, political, social and religious contexts, and that the implementation of recommendations in each country will reflect domestic considerations. UNDP and APF will carefully consider the recommendations directed to them in accordance with their organizational strategic plans and financial resources.
**Capacity-building**

1. Build the capacity of NHRI (members and staff) in central and regional offices to provide an accessible and safe space for people of diverse SOGI, where their rights are protected and promoted.
2. Establish focal points within NHRI for SOGI and establish clear work plans for them.
3. Build relationships with civil society organizations (CSOs) and networks in order to inform the work of the NHRI and to ensure effective communication outreach to communities of diverse SOGI.
4. Build relationships with diplomatic partners and other allies to strengthen capacity to engage on sensitive issues.
5. Ensure visibility and explicit inclusion of SOGI in internal strategic planning processes.

**Research**

6. Engage in research on SOGI with community organizations, CSOs/NGOs, local authorities, and University Research Centres.
7. Document human rights violations and discrimination based on SOGI and use the results to empower communities of diverse SOGI. Review domestic legislation (central and local levels) for compatibility with international standards.
8. Mainstream SOGI issues into human rights research agendas.
9. Share information amongst NHRI about best practices in other jurisdictions.

**Education, Promotion and Dialogue**

10. Provide a platform for persons of diverse SOGI to engage in dialogue with all relevant groups including parliamentarians, the judiciary, the security/law enforcement sector, medical practitioners and community and religious leaders.
11. Promote dialogue among community and religious leaders on the relationship between faith, religion, customs and tradition and SOGI.
12. Promote greater understanding between people of diverse SOGI, their families and the wider community.
13. Engage in partnerships with CSOs to provide human rights education and information about remedies for human rights violations to people of diverse SOGI, including the role of NHRI and complaint mechanisms.
14. Build the capacity of law enforcement officers, government service providers, members of the judiciary, and religious leaders to interact appropriately with persons of diverse SOGI.
15. Mainstream SOGI issues in all human rights education conducted by NHRI, especially of youth.
16. Develop training manuals and conduct awareness-raising on SOGI issues for schools and universities.
17. Engage with and educate the media on SOGI issues and work with them to raise awareness about the role of NHRI and the availability of complaint mechanisms.
18. Reach out to parental/family associations to encourage understanding of SOGI issues and build support systems to access parents/families accordingly.

**Monitoring**

19. Ensure that persons of diverse SOGI are included in NHRI activities, for example, in projects on trafficking, access to justice, health, housing, education and poverty reduction.
20. In partnership with SOGI communities and NGOs, document, report on and respond to issues of discrimination and human rights violations.
21. **Conduct periodic monitoring in detention centres, hospitals and schools.**

22. **Develop guidelines on best practices for LGBT in detention facilities based on South–South exchanges.**

23. **Provide disaggregated data on violence for SOGI issues based on perpetrators, victims and impact of violence.**

**Advocacy**

24. **In partnership with SOGI communities, lead advocacy on the reform/repeal of national laws which violate human rights standards and create barriers for SOGI communities.**

25. **Advocate for domestic legislation incorporating international human rights obligations and eliminating discrimination based on SOGI.**

26. **Use alternative entry points (such as the CEDAW framework, youth, employment, health and HIV) to advocate for SOGI issues.**

27. **Engage as far as possible with regional/sub-regional human rights mechanisms, using alternative entry points to address SOGI issues where appropriate.**

28. **Form sub-regional networks of NHRIs to address SOGI issues.**

29. **Advocate for the application of the UN Declaration on Human Rights Defenders in relation to SOGI.**

30. **Advocate for change in the attitudes and behaviours of policymakers, law enforcement officials and society towards people of diverse SOGI.**

31. **Advocate for visibility and explicit inclusion of SOGI in national action plans.**

**APF**

32. **Engage with regional and sub-regional SOGI CSOs to seek their contributions to (i) an APF manual on the role of NHRIs in promoting and protecting the rights of LGBTI and (ii) further develop a pilot blended learning programme (comprising of online and face-to-face adult learning) for APF members on the role of NHRIs in promoting and protecting the rights of people of diverse SOGI. This will be undertaken in the next APF strategic cycle of 2015–2020.**

33. **Organize meetings for South–South sharing of best practices, lessons learned and research by NHRIs in promoting and protecting the human rights of people of diverse SOGI.**

34. **Continue to cooperate with UN and other stakeholders to promote the role of NHRIs in promoting and protecting the human rights of people of diverse SOGI.**

35. **Distribute the workshop’s Programme of Action and Support to the APF membership and post it to the APF website (www.asiapacificforum.net).**

**UNDP**

36. **Provide technical support and financial support, through ‘Being LGBT in Asia’ and through other related programmes, for implementation of the above actions.**

NHRIs are requested to, where applicable, report annually to the APF on the status and implementation of the above actions including where relevant the challenges and achievements in that implementation. The APF will include a consolidated report on implementation of the Programme of Action and Support through its annual reporting.
Annex 2
Workshop agenda

**AGENDA**

*Workshop on the Role of National Human Rights Institutions (NHRIs) in Promoting and Protecting the Rights, including Health, of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People in Asia and the Pacific*

*24–25 February 2015*

*United Nations Conference Centre, Bangkok, Thailand*

<table>
<thead>
<tr>
<th>TIME</th>
<th>TOPIC</th>
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<tbody>
<tr>
<td>8:30am – 9:00am</td>
<td>Registration</td>
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<tr>
<td>9:00am – 9:30am</td>
<td>Welcoming Remarks</td>
</tr>
<tr>
<td></td>
<td>• Nadia Rasheed, UNDP Team Leader – HIV, Health and Development, Bangkok Regional Hub</td>
</tr>
<tr>
<td></td>
<td>• Pip Dargan, Deputy Director, Asia Pacific Forum, APF</td>
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<tr>
<td></td>
<td>• Dédé Oetomo, Chair, Asia Pacific Coalition on Male Sexual Health (APCOM)</td>
</tr>
<tr>
<td>9:30am – 10:30am</td>
<td>Review of the Advisory Council of Jurists and Asia Pacific Forum Recommendations for NHRIs</td>
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<tr>
<td></td>
<td><strong>Objective</strong></td>
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<tr>
<td></td>
<td>To provide an overview of the progress made since the APF’s 2009 Yogyakarta Principles</td>
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<td></td>
<td>Meeting, and to present the Recommendations included in the 2010 Advisory Council of</td>
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<td></td>
<td>Human Rights Institutions to Address Human Rights in Relation to Sexual Orientation,</td>
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<td></td>
<td>Gender Identity (SOGI) and HIV.</td>
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<td></td>
<td><strong>Presenters</strong></td>
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<tr>
<td></td>
<td>• Professor Vitit Muntarbhorn, International Human Rights Expert &amp; Professor of Law at</td>
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<tr>
<td></td>
<td>Chulalongkorn University, Bangkok</td>
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<tr>
<td></td>
<td>• Nick Booth, Policy Advisor for Human Rights &amp; Access to Justice, UNDP Bangkok</td>
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<tr>
<td></td>
<td>Regional Hub</td>
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<tr>
<td></td>
<td>• Brianna Harrison, Human Rights and Law Advisor, UNAIDS Asia Pacific Regional Support</td>
</tr>
<tr>
<td></td>
<td>Team</td>
</tr>
<tr>
<td>10:30am – 11:00am</td>
<td>COFFEE BREAK (Group Picture)</td>
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<tr>
<td>11:00am – 12:45pm</td>
<td>RESEARCH</td>
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<tr>
<td></td>
<td>How NHRIs have progressed in conducting research to build the evidence base on SOGI</td>
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<tr>
<td></td>
<td>and in documenting the domestic impact of SOGI-related human rights violations</td>
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</table>
Objective: To discuss the engagement of NHRIs in the region in conducting research to: (1) Inform themselves about available or on-going research in their jurisdiction and overseas relating to the nature and incidence of human rights violations based on SOGI; (2) Identify gaps in that research and foster or undertake research to fill those gaps; (3) Foster or undertake research, documentation and the gathering of information on discrimination on the basis of SOGI; (4) Facilitate studies with appropriate stakeholders on protecting the rights of sexual and gender minorities in the context of local social and cultural traditions and religious beliefs; and (5) Document the human rights situations related to SOGI.

Chair: Professor Vitit Muntarbhorn

Community Expert: Success & Challenges faced by the LGBT community in undertaking research with NHRIs

Dédé Oetomo, Chair of APCOM, Indonesia (15 min)

NHRI Representative: Experience & Implication of NHRIs in building the evidence base on SOGI and in documenting the domestic impact of SOGI-related human rights violations

Mr Subarna Kumar Karmacharya, Human Rights Commission of Nepal

Discussion: To provide opportunities for NHRI representatives and Community Experts to share their experiences and perspectives of their respective country context;

To identify needs for capacity-building, training, regional exchanges of experiences and other support that may be included in forthcoming regional development programming;

To agree on priorities for strengthened engagement by NHRIs on SOGI-related Research and LGBTI human rights issues in the period 2015–2017.

12:45pm – 2:00pm LUNCH

2:00pm – 4:30pm EDUCATION, PROMOTION & DIALOGUE

How NHRIs have progressed in educating duty bearers and rights holders on SOGI issues and in facilitating dialogue with key stakeholders

Objective: To discuss the engagement of NHRIs in the region in Education, Promotion and Dialogue on SOGI issues: (1) Facilitate a dialogue with key stakeholders; (2) Raise awareness within the LGBT community; (3) Raise awareness within the judiciary and law enforcement; (4) Raise awareness with the education system; and (5) Raise awareness within professional organizations and support services.

Chair: Chris Sidoti

Community Expert: The Role of NHRIs working with LGBTI Community Organizations

Mr Basudev Bajagain, Human Rights Commission of Nepal

NHRI Representatives: Success & Challenges of NHRIs in Educating, Promoting and Facilitating Dialogue on SOGI issues

Ms Nurul Malim, SUHUKAM

Md Imam Uddin Kabir, Bangladesh Human Rights Commission

Discussion: To provide opportunities for NHRI representatives and Community Experts to share their experiences and perspectives of their respective country context;

3:30pm – 3:45pm COFFEE BREAK
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<tr>
<th>Time</th>
<th>Topic</th>
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<tr>
<td>3:45 pm – 4:30 pm</td>
<td>Discussion (continued)</td>
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<tr>
<td></td>
<td>• To identify needs for capacity-building, training, regional exchanges of experiences and other support that may be included in forthcoming regional development programming;</td>
</tr>
<tr>
<td></td>
<td>• To agree on priorities for strengthened engagement by NHRIIs in Educating, Promoting and Facilitating Dialogue on SOGI issues in the period 2015–2017.</td>
</tr>
<tr>
<td>4:30 pm – 5:30 pm</td>
<td>Day 1 Wrap-Up</td>
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<tr>
<td></td>
<td>• Professor Vitit Muntarbhorn, International Human Rights Expert, Professor of Law at Chulalongkorn University, Thailand and Co-Chairperson of the workshop that produced the Yogyakarta Principles</td>
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<tr>
<td></td>
<td>• Chris Sidoti, Expert Advisor to APF, formerly Australian Human Rights Commissioner and coordinator of the process that produced the Yogyakarta Principles</td>
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</table>

**DAY 2**
Wednesday, 25 February 2015

**Co-Chaired by Prof. Vitit Muntarbhorn & Mr Chris Sidoti**

<table>
<thead>
<tr>
<th>Time</th>
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<tr>
<td>9:00am – 9:15am</td>
<td>Day 1 Recap – Presentation of the First Draft Priorities for strengthened engagement by NHRIIs on Research and Education, Promotion and Dialogue</td>
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<tr>
<td></td>
<td>• Nick Booth, Policy Advisor for Human Rights &amp; Access to Justice, UNDP</td>
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<tr>
<td>9:15am – 10:30am</td>
<td>SOUTH–SOUTH LEARNING</td>
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<td></td>
<td>How Regional Intergovernmental Commissions on Human Rights voted on SOGI Resolutions</td>
</tr>
<tr>
<td><strong>Objective</strong></td>
<td>To discuss the engagement of Regional Intergovernmental Commissions on Human Rights in supporting and advancing for LGBT rights to: (1) Learn about the challenges and success to develop and vote SOGI Resolutions; (2) Assess the impact of Regional SOGI Resolutions in promoting SOGI at the national level; (3) Inform the ASEAN Intergovernmental Commission on Human Rights on ways forward to develop a SOGI Resolution at the ASEAN level.</td>
</tr>
<tr>
<td><strong>Chair</strong></td>
<td>Chris Sidoti</td>
</tr>
<tr>
<td><strong>OAS Representative</strong></td>
<td>The Experience of the Inter-American Commission on Human Rights (I-ACHR)</td>
</tr>
<tr>
<td><strong>Community Expert</strong></td>
<td>The experience of the ASEAN SOGIE Caucus (ASC) in advocating with the ASEAN Intergovernmental Commission on Human Rights (AICHR)</td>
</tr>
<tr>
<td></td>
<td>Ging Cristobal, ASC interim Chair and Project Coordinator, Asia &amp; Pacific Islands Region, International Gay and Lesbian Human Rights Commission (IGLHRC)</td>
</tr>
<tr>
<td><strong>ASEAN Representative</strong></td>
<td>The Experience of the ASEAN Intergovernmental Commission on Human Rights</td>
</tr>
<tr>
<td></td>
<td>Rafendi Djamin, Indonesian Representative for the AICHR</td>
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</tbody>
</table>
Short Discussion

The Experience of the South Asian Association for Regional Co-operation in Law

Hemant K. Batra, Secretary General, SAARCLAW

• To provide opportunities for participants to reflect on best practices in advocating with regional intergovernmental human rights bodies to advance LGBT rights

10:30am – 10:45am

COFFEE BREAK

10:45am – 12:30pm

MONITORING HUMAN RIGHTS SITUATIONS

How NHRI have progressed in monitoring human rights situations of persons of diverse SOGI

Objective

To discuss the engagement of NHRI in the region in monitoring the human rights situation of persons of diverse SOGI conducting research to: (1) Ensure the human rights of persons of diverse SOGI are respected, protected and promoted; (2) Ensure persons of diverse SOGI are included in NHRI activities; (3) Document and respond to issues of SOGI-related discrimination and assist with appropriate remedies; (4) Ensure that NHRI complaints mechanisms are accessible; and (5) Where there is no complaints function, advocate for SOGI-related discrimination to be investigated by the appropriate independent body.

Chair

• Professor Vitit Muntarbhorn

Community Expert

• Success and Challenges faced by the LGBT community to report human rights violations to NHRI

Jack Byrne, International Human Rights Expert & former Commissioner to the National Commission for Human Rights, New Zealand

NHRI Representative

• Success & Challenges of NHRI in monitoring human rights situations of persons of diverse SOGI

Professor Abbas, KOMNAS HAM
Commissioner Tim Wilson, Australian Human Rights Commission

Discussion

• To provide opportunities for NHRI representatives and Community Experts to share their experiences and perspectives of their respective country context;

• To identify needs for capacity-building, training, regional exchanges of experiences and other support that may be included in forthcoming regional development programming;

• To agree on priorities for strengthened engagement by NHRI on the monitoring of SOGI-related human rights situations in the period 2015–2017.

12:30pm – 2:00pm

LUNCH

2:00pm – 4:15pm

ADVOCACY

How NHRI have progressed in advocating for the removal of criminal laws and for the enactment of SOGI-related legal protections that align with the Yogyakarta Principles
**Objective**

To discuss the engagement of NHRI representatives in advocacy in relation to: (1) the interpretation and amendment of domestic laws; (2) the end of selective or disproportionate enforcement of criminal laws; (3) the application of international law; (4) the interpretation and application of religious and traditional laws and practices that align with the Yogyakarta Principles; and (5) the provision of services.

**Chair**

- Chris Sidoti

**Community Expert**

- Community Assessment on NHRI’s Role in Advocating for Anti-SOGI Discrimination Legislation
  
  Jonas Bagas, Executive Director at TLF Share Collective, Philippines

**NHRI Representative**

- Success & Challenges of NHRI’s in Advocacy for Creating Enabling Legal Environments Protective of Persons of diverse SOGI
  
  Mr Yoontaik Kim, National Human Rights Commission of Korea
  Ms Krissi Shaffina Twyla A. Rubin, Philippines Commission on Human Rights

**Discussion**

- To provide opportunities for NHRI representatives and Community Experts to share their experiences and perspectives of their respective country context;

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<tr>
<td>3:15pm – 3:30pm</td>
<td><strong>COFFEE BREAK</strong></td>
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<tr>
<td>Discussion</td>
<td>To identify needs for capacity-building, training, regional exchanges of experiences and other support that may be included in forthcoming regional development programming;</td>
</tr>
<tr>
<td></td>
<td>To agree on priorities for strengthened engagement by NHRI’s in Advocacy on SOGI issues in the period 2015–2017.</td>
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<tr>
<td>Evaluation and feedback</td>
<td>Workshop Evaluation, for all delegates to complete</td>
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<th>Time</th>
<th>Activity</th>
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<td>4:00pm – 4:30pm</td>
<td><strong>FINAL STATEMENT</strong></td>
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<tr>
<td>Objective</td>
<td>Building on the two-day workshop discussions, to agree on a Final Statement including: (1) Recommendations for strengthened engagement by NHRI’s in the period 2015–2017 and (2) Recommendations to UN bodies and other development partners.</td>
</tr>
<tr>
<td>Presenter</td>
<td>Nick Booth, Policy Advisor for Human Rights &amp; Access to Justice, UNDP</td>
</tr>
<tr>
<td>Endorsement</td>
<td>Participants to review &amp; endorse the Final Statement</td>
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<td></td>
<td>Update on Regional Dialogue Agenda and Process</td>
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<td></td>
<td>Edmund Settle, Policy Advisor on HIV, Human Rights and Sexual Diversity</td>
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<th>Time</th>
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<tr>
<td>4:30 – 4:45 pm</td>
<td>Closing Remarks</td>
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<tr>
<td></td>
<td>Nadia Rasheed, Regional Team Leader – HIV, Health and Development, UNDP Bangkok Regional Hub</td>
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</table>
## Annex 3
### Participants list

**United Nations Development Programme & Asia Pacific Forum of National Human Rights Institutions**

**Workshop on the Role of National Human Rights Institutions in Promoting and Protecting the Rights, including Health, of LGBTI People in Asia and the Pacific**

24–25 February 2015

1. **Members of the Asia Pacific Forum of National Human Rights Institutions**

### APF Member—Full

<table>
<thead>
<tr>
<th>Institution</th>
<th>Delegate Name</th>
<th>Country</th>
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</thead>
<tbody>
<tr>
<td>AFGHANISTAN INDEPENDENT HUMAN RIGHTS COMMISSION</td>
<td>Major General Ayub Assil Commissioner</td>
<td>AFGHANISTAN</td>
</tr>
<tr>
<td><a href="http://www.aihrc.org.af">www.aihrc.org.af</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AUSTRALIAN HUMAN RIGHTS COMMISSION</td>
<td>Mr Timothy Wilson Commissioner</td>
<td>AUSTRALIA</td>
</tr>
<tr>
<td><a href="http://www.humanrights.gov.au">www.humanrights.gov.au</a></td>
<td></td>
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</tr>
<tr>
<td>NATIONAL HUMAN RIGHTS COMMISSION OF INDIA</td>
<td>Mr Arora Sunil Deputy Registrar</td>
<td>INDIA</td>
</tr>
<tr>
<td><a href="http://www.nhrc.nic.in">www.nhrc.nic.in</a></td>
<td></td>
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</tr>
<tr>
<td>INDOONESIAN NATIONAL COMMISSION ON HUMAN RIGHTS (KOMNAS HAM)</td>
<td>Professor Hafid Abbas Chairperson</td>
<td>INDONESIA</td>
</tr>
<tr>
<td><a href="http://www.komnas.go.id">www.komnas.go.id</a></td>
<td></td>
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<tr>
<td>NATIONAL HUMAN RIGHTS COMMISSION OF THE REPUBLIC OF KOREA</td>
<td>Mr Yoontaik Kim Human Rights Officer, Policy and Education Department</td>
<td>REPUBLIC OF KOREA</td>
</tr>
<tr>
<td><a href="http://www.humanrights.go.kr">www.humanrights.go.kr</a></td>
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<tr>
<td>HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)</td>
<td>Ms Nurul Malim Deputy Secretary, Policy, Law and Complaints Group</td>
<td>Malaysia</td>
</tr>
<tr>
<td><a href="http://www.suhakam.org.my">www.suhakam.org.my</a></td>
<td></td>
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<tr>
<td>NATIONAL HUMAN RIGHTS COMMISSION OF MONGOLIA</td>
<td>Ms Zolzaya Gantogtokh Officer in Charge of Human Rights Promotion, Human Rights Education Division</td>
<td>MONGOLIA</td>
</tr>
<tr>
<td><a href="http://www.mn-nhrc.org">www.mn-nhrc.org</a></td>
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<tr>
<td>NATIONAL HUMAN RIGHTS COMMISSION OF NEPAL</td>
<td>Mr Subarna Kumar Karmacharya Director, Policy Research, Planning and Collective Rights</td>
<td>NEPAL</td>
</tr>
<tr>
<td><a href="http://www.nhrc-nepal.org">www.nhrc-nepal.org</a></td>
<td>Mr Basudev Bakagain Human Rights Officer, Investigation and Monitoring</td>
<td></td>
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</table>
# Report of the Workshop on the Role of National Human Rights Institutions in Promoting and Protecting the Rights, including Health, of LGBTI People in Asia and the Pacific

## Institution Delegate Name Country

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<thead>
<tr>
<th>Institution</th>
<th>Delegate Name</th>
<th>Country</th>
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<tbody>
<tr>
<td>PHILIPPINES COMMISSION ON HUMAN RIGHTS</td>
<td>Ms Krissi Shaffina Twyla A. Rubin, Attorney IV</td>
<td>PHILIPPINES</td>
</tr>
<tr>
<td><a href="http://www.chr.gov.ph/">http://www.chr.gov.ph/</a></td>
<td></td>
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<tr>
<td>NATIONAL HUMAN RIGHTS COMMISSION OF THAILAND</td>
<td>Mr Tairjing Siriphanich</td>
<td>THAILAND</td>
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<td><a href="http://www.nhrc.or.th">www.nhrc.or.th</a></td>
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<tr>
<td>TIMOR LESTE OFFICE OF THE PROVEDOR FOR HUMAN RIGHTS AND JUSTICE</td>
<td>Mr Moises Pereira</td>
<td>TIMOR LESTE</td>
</tr>
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<td><a href="http://www.pdhj.org">www.pdhj.org</a></td>
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### APF MEMBER–ASSOCIATE

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<tr>
<th>Institution</th>
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<tr>
<td>NATIONAL HUMAN RIGHTS COMMISSION BANGLADESH</td>
<td>Mr Imam Uddin Kabir, Deputy Director</td>
<td>BANGLADESH</td>
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<td>MYANMAR NATIONAL HUMAN RIGHTS COMMISSION</td>
<td>Dr Nyan Zaw, Commissioner</td>
<td>MYANMAR</td>
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<tr>
<td>NATIONAL CENTRE FOR HUMAN RIGHTS OF KAZAKHSTAN</td>
<td>Mr Rustam Kypshakbayev, Senior Expert</td>
<td>KAZAKHSTAN</td>
</tr>
<tr>
<td>OMBUDSMAN, NHRI OF SAMOA</td>
<td>Ms Loukinikini Vila, Legal and Investigations Officer, Good Governance and Human Rights</td>
<td>SAMOA</td>
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<td>HUMAN RIGHTS COMMISSION OF SRI LANKA</td>
<td>Mrs Menaka Herath, Legal Officer</td>
<td>SRI LANKA</td>
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<tr>
<td><a href="http://www.hrcsl.lk">www.hrcsl.lk</a></td>
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## 2. NON-GOVERNMENTAL ORGANIZATIONS

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<th>Organization</th>
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<tbody>
<tr>
<td>ASIA PACIFIC COALITION ON MALE SEXUAL HEALTH</td>
<td>Dr Dédé Oetomo, Chairperson</td>
<td>INDONESIA</td>
</tr>
<tr>
<td><a href="http://www.apcom.org/">http://www.apcom.org/</a></td>
<td>Mr Midnight Poonkasetwattana, Executive Director</td>
<td></td>
</tr>
<tr>
<td>INTERNATIONAL GAY AND LESBIAN HUMAN RIGHTS COMMISSION</td>
<td>Ms Ging Cristobal</td>
<td>PHILIPPINES</td>
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<td><a href="http://iglhr.org/">http://iglhr.org/</a></td>
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<td>TLF SHARE COLLECTIVE</td>
<td>Mr Jonas Bagas, Executive Director</td>
<td>PHILIPPINES</td>
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<td><a href="http://www.tlfshare.org/">http://www.tlfshare.org/</a></td>
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<tr>
<td>TransAction</td>
<td>Mr Jack Byrne, Consultant</td>
<td>NEW ZEALAND</td>
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3. OTHERS

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<tr>
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<tr>
<td>ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS</td>
<td>Mr Rafendi Djamin</td>
<td>INDONESIA</td>
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<td><a href="http://aichr.org/">http://aichr.org/</a></td>
<td>AICHR Representative to Indonesia</td>
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</tr>
<tr>
<td>CHULALONGKORN UNIVERSITY</td>
<td>Prof Vitit Muntarbhorn</td>
<td>THAILAND</td>
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<td>Professor of Law; Commissioner, (UN)</td>
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<td></td>
<td>Commission of Inquiry on Syria</td>
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<tr>
<td></td>
<td>Mr Pagsit Pusittrakul</td>
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<tr>
<td></td>
<td>Coordinator, Faculty of Law</td>
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<tr>
<td></td>
<td>Mr Sittikorn Tangsiri</td>
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<tr>
<td></td>
<td>Assistant, Faculty of Law</td>
<td></td>
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<tr>
<td>EMBASSY OF SWEDEN, BANGKOK</td>
<td>Ms Camilla Monsine Ottosson</td>
<td>THAILAND</td>
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<td><a href="http://www.swedenabroad.com/bangkok">http://www.swedenabroad.com/bangkok</a></td>
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<td>INTER-AMERICAN COMMISSION ON HUMAN RIGHTS</td>
<td>Ms Fanny Gomez</td>
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<td><a href="http://www.oas.org/en/iachr/">http://www.oas.org/en/iachr/</a></td>
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<td>Mahidol university</td>
<td>Mr Douglas Sanders</td>
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<td><a href="http://www.mahidol.ac.th/en/">http://www.mahidol.ac.th/en/</a></td>
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<td>MEDIA INDUSTRY DEVELOPMENT AUTHORITY</td>
<td>Mr Ashwin Raj</td>
<td>FIJI</td>
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<td>NATIONAL COMMISSION ON VIOLENCE AGAINST WOMEN (KOMNAS PEREMPUAN)</td>
<td>Ms Yulia Dwi Andriyanti</td>
<td>INDONESIA</td>
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<td><a href="http://www.komnasperempuan.or.id/">http://www.komnasperempuan.or.id/</a></td>
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<td>SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION IN LAW (SAARCLAW)</td>
<td>Mr Hemant Batra</td>
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<td>UNAIDS</td>
<td>Ms Brianna Harrison</td>
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<td><a href="http://www.unaids.org/">http://www.unaids.org/</a></td>
<td>Human Rights and Law Advisor</td>
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### Organization

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<tr>
<td>UNDP</td>
<td>Mr Clifton Cortez, Global HIV Manager, HIV, Health and Development Group</td>
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<td></td>
<td>Ms Nadia Rasheed, Regional Team Leader, HIV, Health and Development, Asia Pacific</td>
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<td>Mr Edmund Settle, Policy Advisor HIV, Human Rights, Law</td>
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<td>Mr Nicholas Booth, Programme Advisor Governance, Conflict Prevention, Access to Justice and Human Rights</td>
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<td>Ms Anna Chernyshova, Programme Manager MSA Global Fund Programme</td>
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<td>Mr Ninoslav Mladenovic, Community Systems Strengthening, Human Rights and Advocacy Officer</td>
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<td>Mr John Godwin, Rapporteur</td>
<td>AUSTRALIA</td>
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<td>USAID</td>
<td>Mr Thomas White, Deputy Director, Governance and Vulnerable Populations Office</td>
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<td></td>
<td>Mr Vy Lam, DCHA/DRG/LGBT Specialist IIE, Democracy Fellow</td>
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### 4. SECRETARIAT

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<tr>
<td>ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS SECRETARIAT</td>
<td>Ms Pip Dargan, Deputy Director</td>
</tr>
<tr>
<td><a href="http://www.asiapacificforum.net">www.asiapacificforum.net</a></td>
<td>Mr Chris Sidoti, Senior Consultant</td>
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<td></td>
<td>Mr Ashley Bowe, Project Manager</td>
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