

# Regional Report

## THE CAPACITY OF NATIONAL HUMAN RIGHTS INSTITUTIONS TO ADDRESS HUMAN RIGHTS IN RELATION TO SEXUAL ORIENTATION, GENDER IDENTITY AND HIV



**ASIA PACIFIC FORUM**  
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## Regional Report

### The Capacity of National Human Rights Institutions to Address Human Rights in Relation to Sexual Orientation, Gender Identity and HIV



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## FOREWORD

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This study takes stock of recent developments in a number of South and South-east Asian countries in relation to the issue of sexual orientation and gender identity. It provides a welcome update of positive initiatives from various national human rights institutions, in addressing the discrimination, stigmatization and violations facing individuals and groups who simply wish “to be” what they actually are. These initiatives include research, advocacy, education, public mobilization, and contributions to judicial decisions, laws, policies and other processes to protect human rights.

The challenges which remain are numerous. Various laws, policies, practices and beliefs are still cloistered and lacking in empathy for those wishing to profess their sexual orientation and gender identity. Regrettably, violence is employed in some situations to intimidate and persecute persons and groups falling under this umbrella. It is important to highlight international human rights standards, such as those found in the Yogyakarta Principles, to promote humane action and nurture attitude and behavior anchored on a sense of inclusion and inclusiveness.

There is thus a key message to ensure justice and open up the space for all persons who are not necessarily part of the social mainstream but who epitomize the inherent wealth of human diversity. It is work-in-progress and work-for-progress which demand and deserve our sustained support worldwide.

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The participating countries were identified based on the capacity of National Human Rights Institutions (NHRIs) and other human rights advocacy bodies; existing national and local legal frameworks, and the strength of communities of people of diverse sexual orientation and gender identities (SOGI). Focus countries were: Bangladesh, India, Nepal, Pakistan, Sri Lanka, Indonesia, the Philippines and Timor-Leste.

In South Asia, the Project relied on the valuable contributions and participation of the following technical partners and community partners: Bandhu Social Welfare Society (Bangladesh), the Center for Legal Aid and Rights and INFOSEM (India), Blue Diamond Society (Nepal), Naz Male Health Alliance (Pakistan), and EQUAL GROUND (Sri Lanka).

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This report was authored by Ms. Naomi Burke-Shyne, Legal Consultant, IDLO, together with Ms. Ayesha Mago, Legal Consultant, IDLO.

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## GLOSSARY

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ACJ	Advisory Council of Jurists of the Asia Pacific Forum of National Human Rights Institutions
ACJ Report	Report of the Advisory Council of Jurists to the Asia Pacific Forum on SOGI
AMPATI	Alliance Community Care Television Indonesia
APCOM	Asia Pacific Coalition on Male Sexual Health
CHR Philippines	Commission on Human Rights of the Philippines
FKWI	Forum for Transgender Communications of Indonesia
HRC Sri Lanka	Human Rights Commission of Sri Lanka
HRCP	Human Rights Commission of Pakistan (non-governmental)
IDLO	International Development Law Organization
KOMNAS HAM	Komisi Nasional Hak Asasi Manusia – the Indonesian National Human Rights Commission
KPI	Indonesian Broadcasting Commission
LGBTI	Lesbian, gay, bisexual, transgender, intersex (used interchangeably with SOGI)
MOHR	Ministry of Human Rights
MSM	Men who have sex with men
NHRC Bangladesh	National Human Rights Commission of Bangladesh
NHRC India	National Human Rights Commission of India
NHRC Nepal	National Human Rights Commission of Nepal
NHRI SOGI Project	Assessing the Capacity of National Human Rights Institutions to Address Human Rights related to Sexual Orientation, Gender Identity and HIV in South Asia and Southeast Asia
NHRIs	National Human Rights Institutions
Pakistan NCHR	Pakistan National Commission for Human Rights
PDHJ	Office of the Provedor for Human Rights and Justice, Timor-Leste Office
SAARCLAW	The legal apex body of the South Asian Association for Regional Cooperation (SAARC)
SOGI	Sexual orientation and gender identity
UNAIDS	The Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNDP APRC	United Nations Development Programme, Asia-Pacific Regional Centre
UNOHCHR	United Nations Office of the High Commissioner for Human Rights



## EXECUTIVE SUMMARY

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### Project Background

This Project, *Assessing the Capacity of National Human Rights Institutions to Address Human Rights in relation to Sexual Orientation, Gender Identity and HIV* (NHRI SOGI Project or the Project), forms part of broader regional collaborative efforts to promote an enabling legal environment for the response to HIV. The NHRI SOGI Project aimed to build understanding of the capacity and response of selected Asian National Human Rights Institutions (NHRIs) to the human rights issues faced by people of diverse sexual orientation and gender identity (SOGI).

In much of Asia, SOGI-related stigma and discrimination strips people of their rights and excludes them from mainstream health programs, public services, and economic opportunity. Stigma and discrimination also have the effect of increasing the acceptability and incidence of violence perpetrated against men and women of diverse SOGI and transgender people. Under these circumstances people of diverse SOGI face ongoing and dehumanizing harm, humiliation and exclusion. Driven underground, people of diverse SOGI are denied the ability to live productive lives as contributing and engaged members of society. Deep set socio-cultural prejudices are exacerbated by punitive and discriminatory legal frameworks, criminalization of same-sex sexual relations in a number of jurisdictions, and law enforcement practices.

As independent institutions positioned between civil society organizations and State institutions, NHRIs are well placed to advocate for action to address SOGI-related stigma and discrimination. This independence also means NHRIs have the capacity to facilitate strategic collaboration between actors, while emphasizing international human rights obligations.<sup>1</sup>

### Challenges faced by NHRIs in Addressing SOGI-related Rights

Although all NHRIs involved in the NHRI SOGI Project had some prior institutional exposure to SOGI,<sup>2</sup> the issue remains highly sensitive in many jurisdictions. NHRIs face challenges in advocating for SOGI rights, including backlash from conservative social, political or religious factions. For example, in Indonesia in 2010, a human rights training session for transgender people conducted by the Indonesian National Human Rights Commission (Komisi Nasional Hak Asisi Manusia, KOMNAS HAM) was violently interrupted by a conservative religious group. Participants were forced to hide in hotel rooms while waiting for evacuation.

Additionally, SOGI-related rights compete with other compelling human rights priorities on NHRI agendas, and often NHRI personnel have had little exposure to what diverse sexual orientation and gender identity mean. Notwithstanding this, the Project revealed some strong examples of NHRIs acting in strategic and innovative ways, to advance the rights of people of diverse SOGI.

### Increased Recognition of SOGI-related Rights at Global and Regional Level

Over the past four years, since the Asia Pacific Forum of National Human Rights Institutions (Asia Pacific Forum) first brought together member Commissions to discuss the role of NHRIs in promoting the Yogyakarta Principles, there has been significant progress in recognising SOGI-related rights. For example, at a global level, ten countries have passed legislation recognizing same-sex marriage.<sup>3</sup> Regionally, there has

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1 These NHRI capacities are also identified in the Handbook on HIV and Human Rights for National Human Rights Institutions, 2007, OHCHR, UNAIDS, with respect to HIV.

2 NHRIs in seven focus countries participated in the 15th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions in Indonesia in 2010, where the Asia Pacific Forum's Advisory Council of Jurists considered a reference on domestic laws and policies relating to SOGI in the countries of member NHRIs. The Pakistan National Commission on Human Rights was established in 2012 and was not operative during the period of the NHRI SOGI Project. Alternative rights reporting mechanisms were reviewed in Pakistan.

3 Argentina July 2010, Denmark June 2012, Iceland June 2010, Mexico December 2009, New Zealand April 2013, Portugal January 2010, Sweden May 2009, Uruguay April 2013, France May 2013.

been a landmark Delhi High Court decision finding the criminalization of same-sex sexual relations to be unconstitutional in India;<sup>4</sup> and recognition of *hijras*' entitlement to equal protection of rights, including right to life and dignity, by the Supreme Court of Pakistan.<sup>5</sup> These milestones follow the 2007 judgment of the Supreme Court of Nepal which formally recognized the rights of transgender people (the third gender) and ordered that national identity cards with a third gender option be issued.<sup>6</sup>

Cognizant of the role and leadership of the Asia Pacific Forum in the region, this report ties its review of NHRI SOGI-related initiatives to the recommendations made in the 2010 report of the Asia Pacific Forum's Advisory Council of Jurists (ACJ) on SOGI. This is detailed in greater depth below.

## The NHRIs Capacity and Impact

It is within this environment of change and progression, that NHRIs have a distinct and important role in advocating for SOGI-related rights. This Project confirmed the impact of efforts undertaken by NHRIs to advance SOGI-related rights. The examples in this report illustrate how NHRI initiatives have changed individual lives, and begun to catalyze whole society transformation. This serves to emphasize the role of the law as a critical tool in the current global movement for equality, non-discrimination, and full recognition of the rights of people of diverse SOGI.

NHRIs with well developed capacity to address SOGI-related rights issues tended to demonstrate certain commonalities.

Strong and open leadership was a primary factor in mobilizing institutional will and building institutional capacity on SOGI. One example of this is the work of the Chairperson of the Commission for Human Rights of the Philippines (CHR Philippines). Under the leadership of the current Chairperson, the CHR Philippines has established SOGI and HIV-related rights as one of its emerging priority areas. In follow-up to this commitment, in 2012, the CHR Philippines launched an internal online survey to gather baseline information on the capacity needs of the CHR Philippines on SOGI and HIV. This baseline information will be used to inform the design of activities for CHR Philippines staff capacity development.

NHRIs with an institutional focal point on SOGI tended to demonstrate increased capacity to address SOGI-related rights issues. The Project revealed that in many countries, a lack of awareness of NHRI processes or lack of awareness of the willingness of a NHRI to address SOGI-related rights, may contribute to the reticence of people of diverse SOGI approaching a NHRI. The knowledge that there is a sensitized officer designated to deal with SOGI-related rights appears to go some way in overcoming this challenge. For example, the National Human Rights Commission of Nepal (NHRC Nepal) has had a focal point on lesbian, gay, bisexual, transgender and intersex (LGBTI)<sup>7</sup> rights since 2005 and have fostered a productive, working relationship with the Nepal national LGBTI network, Blue Diamond Society. This relationship is evident in the internship initiative jointly conceived and implemented by NHRC Nepal and Blue Diamond Society in 2012. Under this initiative, a Blue Diamond Society nominated community representative joined the NHRC Nepal as an intern. This initiative aims to promote NHRC Nepal understanding of SOGI-related rights, and build community capacity in human rights.

An institutional commitment to engage and communicate with civil society is also critical in enabling NHRIs to support and advocate for SOGI-related rights. The outcomes of community engagement are seen in the work of the CHR Philippines regional office in Cebu City. The Commission's engagement and communication with the LGBTI community empowered the local transgender organization to claim their rights, and resulted in the Commission receiving its first complaint related to hate crimes against a transgender person.

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4 Naz Foundation v. Government of NCT of Delhi and Others, the High Court of Delhi at New Delhi, 2 July 2009.

5 Khaki v. Rawalpindi, Supreme Court of Pakistan, 12 December 2009.

6 Sunil Babu Pant v. Government of Nepal, Supreme Court of Nepal, December 2007

7 The acronym LGBTI will be utilised in interchangeably with SOGI throughout this report.

Further practical examples of NHRIs' efforts to advance SOGI-related rights include the advocacy initiatives of the Indonesia National Human Rights Commission (KOMNAS HAM) and the NHRC Nepal. KOMNAS HAM showed commitment to advocating for transgender rights in the case of HR; the case of a transgender man who had married a woman and was subsequently charged with fraud, amongst other offences. In the first instance KOMNAS HAM successfully advocated that HR should be detained in accommodation appropriate to his gender (HR had a male appearance but his identification card stated he was a woman – his biological gender). When HR's matter went to trial, KOMNAS HAM became an *amicus curie* (friend of the court) and argued that the state was not authorized to regulate a person's gender. With KOMNAS HAM's support, HR was cleared of charges.

The NHRC Nepal has also demonstrated an ongoing commitment to advocate for the rights of people of diverse SOGI. In 2012, recognizing that elections were forthcoming, the NHRC Nepal addressed a letter to the Electoral Commission noting the security issues and harassment that transgender people experience when voting (voting queues are gender segregated – male and female). The NHRC Nepal further expressed its concern that the Electoral Commission provide a safe and secure environment for all voters.

These examples highlight the successes of NHRIs with some capacity or experience working on SOGI. Equally important are the achievements of NHRIs first engaging on SOGI-related rights. The National Human Rights Commission of Bangladesh (NHRC Bangladesh), established in 2009, reported it has not yet received a complaint related to SOGI or addressed SOGI-related rights in the course of its work. However in October 2012, the NHRC Bangladesh submitted a report for the 16<sup>th</sup> session of the United Nations Universal Periodic Review (UPR) which, for the first time, advocated for the rights of people of diverse SOGI. The report stated: "The NHRC Bangladesh understands the need for the law to be in harmony with the cultural and social mores of the people. Nevertheless, the NHRC Bangladesh believes that it is now time to ensure that all groups, including those who are transgender, intersex or sexual minority, are protected from discrimination."<sup>8</sup>

Similarly, while the Office of the Provedor for Human Rights and Justice in Timor-Leste (PDHJ) has not yet received a complaint related to SOGI, the oath sworn by the Provedor when taking office explicitly includes a reference to sexual orientation: "I will carry out my functions without discrimination on any ground such as (...) sexual orientation."<sup>9</sup> Notably, under this Project, the PDHJ welcomed increased collaboration with the community of people of diverse SOGI and conducted its first human rights training for people of diverse SOGI, on the request of the community.

A final and critical factor for catalyzing change is the role of the community of people of diverse SOGI. The experiences of this Project indicate that community unity and leadership, combined with diplomatic and persistent advocacy on LGBTI rights, gives rise to productive relationships with NHRIs, and fosters ongoing collaboration and partnership. The impact and importance of the efforts of the LGBTI community: lobbying and advocating on not only rights, but stigma, social and cultural issues, cannot be understated.

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8 Stakeholder Report Universal Periodic Review – 2nd Cycle, National Human Rights Commission, Bangladesh, October 2012; available at: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session16/BD/NHRC\\_UPR\\_BGD\\_S16\\_2013\\_NationalHumanRightsCommission\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session16/BD/NHRC_UPR_BGD_S16_2013_NationalHumanRightsCommission_E.pdf).

9 Article 15: 'Taking-up of Functions' of Law No. 7/2004 – Approving the Statute of the Office of the Ombudsman for Human Rights and Justice, Timor-Leste.



## 1. BACKGROUND

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The goal of this Project, *Assessing the Capacity of National Human Rights Institutions to Address Human Rights in relation to Sexual Orientation, Gender Identity and HIV* (NHRI SOGI Project), is to strengthen the legal response to HIV and promote an enabling legal environment. More specifically, the Project aimed to build understanding of the capacity and response of selected Asian National Human Rights Institutions (NHRIs) to human rights issues faced by people of diverse sexual orientation and gender identity (SOGI). NHRIs in compliance with the Paris Principles have the role of protecting and promoting the human rights of all persons.<sup>10</sup> Their mandates therefore extend to the rights of those who experience human rights violations on the basis of their sexual orientation or gender identity.

### International Law and Policy

In June 2011, the United Nations (UN) Human Rights Council passed a resolution on human rights violations based on sexual orientation and gender identity.<sup>11</sup> This was the first UN resolution ever to bring specific focus to human rights violations based on SOGI. The Resolution affirms the universality of human rights, and notes concern about acts of violence and discrimination based on sexual orientation and gender identity.<sup>12</sup> The Resolution was presented by South Africa, along with Brazil and 39 other co-sponsors (including Timor-Leste) and requested the UN High Commissioner for Human Rights to prepare a study on violence and discrimination faced by people on the basis of sexual orientation or gender identity.

The resultant report and findings were presented by the UN High Commissioner for Human Rights at the 19th session of the Human Rights Council (Report of the HCHR).<sup>13</sup> The Report of the HCHR documented a wide range of discriminatory practices and laws being used against lesbian, gay, bisexual, transgender and intersex (LGBTI) people around the world. It also showed that violence, including rape and sexual violence perpetrated by law enforcement authorities as well as society at large, is a pervasive problem in many countries. Following the ground breaking nature of the Resolution, and reflecting deep commitment to the spirit of the Universal Declaration for Human Rights, the UN High Commissioner for Human Rights stated that:

*'No personal opinion, no religious belief, no matter how deeply held or widely shared, can ever justify depriving another human being of his or her basic rights. And that is what we are discussing here: depriving certain individuals of their human rights – taking away their right to life and security of person, their rights to privacy, to freedom from arbitrary detention, torture and discrimination, to freedom of expression, association and peaceful assembly.'*<sup>14</sup>

The Report of the HCHR is aligned with the human rights commitments expressed in the UN General Assembly Political Declaration on HIV/AIDS: Intensifying our Efforts to Eliminate HIV/AIDS, 2011 (2011 Political Declaration).<sup>15</sup> The 2011 Political Declaration builds upon the 2001 Declaration of Commitment on HIV/AIDS at the UN General Assembly Special Session and the Political Declaration of 2006. Specifically, the 2011 Political Declaration urges States to:

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<sup>10</sup> A/RES/48/134; 85th plenary meeting of the General Assembly, 20 December 1993; available at: <http://www.asiapacificforum.net/members/international-standards>

<sup>11</sup> A/HRC/17/L.9/Rev.1; 17th Session of the UN Human Rights Council, 15 June 2011; available at: <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G11/141/94/PDF/G1114194.pdf?OpenElement>

<sup>12</sup> Ibid.

<sup>13</sup> 'Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity' Report of the United Nations High Commissioner for Human Rights presented at the 19th session of the UN Human Rights Council; A/HRC/19/41; available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-41\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-41_en.pdf)

<sup>14</sup> 'Pillay presents ground breaking UN study on violence, discrimination against people because of their sexual orientation' speech available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11917&LangID=E>

<sup>15</sup> A/RES/65/277; General Assembly Resolution 65/277: Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS, 2011.

*'Commit to intensify national efforts to create enabling legal, social and policy frameworks in each national context in order to eliminate stigma, discrimination and violence related to HIV and promote access to HIV prevention, treatment, care and support and non-discriminatory access to education, health care, employment and social services, provide legal protections for people affected by HIV, including inheritance rights and respect for privacy and confidentiality, and promote and protect all human rights and fundamental freedoms with particular attention to all people vulnerable to and affected by HIV.'*<sup>16</sup>

SOGI-related rights were also a focus of the recent report of the Global Commission on HIV and the Law (Global Commission), *HIV and the Law: Risks, Rights and Health* (2012). The report of the Global Commission acknowledges that whilst the law has the power to 'protect the dignity of all people living with HIV, and in so doing fortify those most vulnerable to HIV' it may also, and frequently does, do serious harm, perpetuating discrimination and isolating those most vulnerable so that they cannot access the preventive or curative services they critically need.<sup>17</sup> The report of the Global Commission specifically addresses the harm caused by discriminatory attitudes and legal frameworks that criminalize consensual same-sex sexual relations, and emphasizes that internationally recognized human rights are being violated in countries around the world. In this regard, the Global Commission recommends:

- the repeal of all laws that criminalize consensual sex between adults of the same-sex and/or laws that punish homosexual identity; and
- the amendment of anti-discrimination laws to expressly prohibit discrimination based on sexual orientation as well as gender identity.

### **The Yogyakarta Principles and the 2010 Report of the Asia Pacific Forum of National Human Rights Institutions Advisory Council of Jurists**

This Project is built upon the Yogyakarta Principles and the 2010 report of the Asia Pacific Forum of National Human Rights Institutions Advisory Council of Jurists, *Human Rights, Sexual Orientation and Gender Identity* (ACJ Report).

The Yogyakarta Principles together with interpretations by UN Treaty Bodies, Special Procedures and regional human rights mechanisms demonstrate a clear acknowledgment that sexual orientation and gender identity are among the grounds of discrimination proscribed by international human rights law.<sup>18</sup>

The Yogyakarta Principles<sup>19</sup> set down the application of international human rights law in relation to SOGI; clarifying and affirming States' human rights obligations. The Yogyakarta Principles further include a series of additional recommendations for States to enhance compliance with these principles (Yogyakarta Additional Recommendations). Yogyakarta Additional Recommendation 'I' speaks specifically to NHRIs and provides: *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.*<sup>20</sup>

16 A/RES/65/277; General Assembly Resolution 65/277: Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS, 2011, 77.

17 Global Commission on HIV and the Law, 'Risks, Rights and Health', UNDP (July 2012), 11.

18 Advisory Council of Jurists Report: Human Rights, Sexual Orientation and Gender Identity, 2010, 17.

19 International Commission of Jurists, Yogyakarta Principles – Principles on the application of international human rights law in relation to sexual orientation and gender identity, March 2007; available at: [http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf)

20 The Yogyakarta Principles, Additional Recommendations.

In May 2009, in response to the Yogyakarta Additional Recommendations, the Asia Pacific Forum facilitated a workshop of member commissions to discuss their role in promoting the implementation of the Yogyakarta Principles. The Asia Pacific Forum recommended practical ways that NHRIs could use their functions and powers to better protect and promote the rights of people of diverse SOGI. The workshop also recommended that the Asia Pacific Forum request its Advisory Council of Jurists (ACJ) to provide advice and recommendations on the question of the consistency or inconsistency with international human rights law, of laws in the Asia Pacific region concerning SOGI. The 2009 Asia Pacific Forum Annual Meeting agreed to this recommendation.<sup>21</sup>

The resulting ACJ Report summarized the application of international human rights law to sexual orientation and gender identity; responded to the five point terms of reference on State laws; and provided a series of recommendations for member institutions (ACJ Recommendations). A complete list of the ACJ Report recommendations are contained in Annex 1.

This report documents and updates NHRIs' progress against the ACJ Recommendations.

Of note, the ACJ Report acknowledges that different priorities, contexts, and resources of member commissions will be relevant in determining implementation of the Recommendations; but emphasizes that all initiatives must 'be in accordance with the international human rights framework which recognizes the universality, indivisibility and interdependency of the human rights of all persons, including persons of diverse sexual orientation or gender identity.'<sup>22</sup>

It is also important to recognize that the ACJ Report states that the recommendations are not exhaustive and that NHRIs should consider any other actions aimed at promoting and protecting the rights of persons of diverse sexual orientation or gender identity.<sup>23</sup>

### **Working in Partnership to Strengthen the Enabling Legal Environment: IDLO, UNDP and SAARCLAW**

IDLO, UNDP and SAARCLAW (the legal apex body of the South Asian Association for Regional Cooperation (SAAARC)) commenced working together in 2010 with a view to strengthening the enabling legal environment in Asia.

In November 2011, IDLO, UNDP and SAARCLAW partnered with the World Bank and UNAIDS to co-host the South Asian Roundtable Dialogue: Legal and Policy Barriers to the HIV Response (South Asian Roundtable). The South Asian Roundtable brought together community leaders and advocates, representatives of the judiciary, human rights institutions, parliamentarians, government officials, lawyers and law students dealing with HIV, key affected populations and human rights. The South Asian Roundtable stimulated participants to undertake initiatives designed to strengthen the rights-based response to HIV in their countries.

The NHRI SOGI Project is one of a number of activities that follows on from the South Asian Roundtable.

### **Prior Relevant Research and Strategies**

The NHRI SOGI Project recognizes the relevance, prior research, developments and contributions of:

- HIV and the Law: Risks, Rights & Health, The Global Commission on HIV and the Law, 2012;
- ESCAP Resolution 67/9 Asia-Pacific regional review of the progress achieved in realizing the Declaration of Commitment on HIV/AIDS and the Political Declaration on HIV/AIDS, 2011;

<sup>21</sup> Advisory Council of Jurists Report: Human Rights, Sexual Orientation and Gender Identity, 2010, 6.

<sup>22</sup> Ibid. 32. The ACJ Report further recognises that the recommendations are not necessarily complete and that NHRIs should consider any other actions aimed at promoting and protecting the rights of persons of diverse SOGI.

<sup>23</sup> Ibid. 32.

- ESCAP Resolution 66/10 Regional call for action to achieve universal access to HIV prevention, treatment, care and support in Asia and the Pacific, 2010;
- International Commission of Jurists, Sexual Orientation and Gender Identity in Human Rights Law: References to Jurisprudence and Doctrine of the United Nations Human Rights System, 2010;
- International Commission of Jurists, Sexual Orientation, Gender Identity and International Human Rights Law – Practitioners’ Guide, No. 4, 2009;
- The Global Fund Strategy in Relation to Sexual Orientation and Gender Identities, 2009; and
- The Handbook on HIV and Human Rights for National Human Rights Institutions, OHCHR, UNAIDS, 2007.

A reference list and full list of prior relevant research is contained at Annex 2.

## 2. CONTEXT

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South Asia and Southeast Asia have concentrated HIV epidemics which impact disproportionately on men who have sex with men (MSM) and transgender people. The HIV prevalence of MSM is reported to be of 7.3% in India, 3.8% in Nepal and 5.2% in Indonesia - many times higher than the general population in these countries.<sup>24</sup> A diverse range of structural factors amplify the vulnerability of MSM and transgender people to HIV, including poverty and inequality; stigma and discrimination; cultural impediments to sex education and sexual discourse; marginalization, violence and social exclusion.

More broadly, stigma and discrimination against people of diverse SOGI across Asia strips them of their rights and leads to their exclusion from mainstream health programs and services, and economic opportunity. This drives people of diverse SOGI underground, making them difficult to reach with public health and social services, and detracting from their ability to live safe and productive lives as contributing members of society. These complex socio-cultural issues are exacerbated by punitive and discriminatory legal frameworks, the criminalization of same-sex sexual relations in a number of Asian jurisdictions, and discriminatory law enforcement practices.

People of diverse SOGI experience frequent violations of their rights and widespread violence, perpetrated by state actors, community and family members. Notably, criminalization of sex between men tends to enhance stigma, discrimination and related violence and is used as an exploitative tool by law enforcement agencies against MSM and transgender people to extort money, threaten, harass, and perpetrate violence.



### 3. PROJECT DESCRIPTION

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The Project was framed with the overarching goals of strengthening the legal response to HIV, and promoting an enabling legal environment in South Asia and Southeast Asia. It was proposed that at the end of the Project, NHRIs and NHRI staff would have:

1. strengthened appreciation and understanding of the rights and vulnerabilities of people of diverse SOGI;
2. identified institutional capacity and mechanisms, and institutional strengths, weaknesses and opportunities to effectively address rights issues faced by people of diverse SOGI; and
3. enhanced networks and partnerships with communities of people of diverse SOGI.

A full project description is included at Annex 3.

#### Engaged Institutions

In South Asia, the National Human Rights Commission of Bangladesh (NHRC Bangladesh) and the National Human Rights Commission of Nepal (NHRC Nepal) actively participated in the Project.

The Project held a series of meetings with the National Human Rights Commission of India (NHRC India) and the Human Rights Commission of Sri Lanka (HRC Sri Lanka).

As part of a parallel study, the Project also held a series of meetings with the non-governmental organization, the Human Rights Commission of Pakistan (HRCP).

South Asian community partners included: Bandhu Social Welfare Society (Bangladesh), INFOSEM (India), Blue Diamond Society (Nepal), Naz Male Health Alliance and partners (Pakistan) and EQUAL GROUND and partners (Sri Lanka).

In South East Asia, the Indonesian National Human Rights Commission (Komisi Nasional Hak Asasi Manusia, KOMNAS HAM), the Commission for Human Rights of the Philippines (CHR Philippines) and the Timor-Leste Office of the Human Rights and Justice Provider (PDHJ) actively participated in the Project.

Southeast Asian community partners included: Lembaga Bantuan Hukum Masyarakat and Sanggar Warna Remaja (SWARA), Gay, Transgender, and MSM Network - Indonesia (GWL-INA) and the Indonesian LGBT Forum (Indonesia), ACHIEVE (the Philippines) and the ISEAN-HIVOS Program (Timor-Leste).

Full details for NHRIs and partners are included at Annex 4.

## 4. METHODOLOGY

### Methodology

The Project was designed with the following core methodology:

- A. Under desk review<sup>25</sup>
- B. Engage partners
- C. Conduct National Stakeholder Consultations
- D. Undertake community surveys
- E. Draft National Reports
- F. Conduct National Partnership Dialogue
- G. Draft Regional Report

A detailed Project methodology is included at Annex 5.

A list of consultations and dialogues held under this Project is included at Annex 6.

### Context Relevant Variations to the Methodology

After completing the desk review, initial communications with partners and national stakeholder consultations, IDLO adapted the methodology to participating country context and needs. Adaptations are outlined below:

Country	Methodology or Adaptation
<b>Bangladesh</b>	In Bangladesh, the NHRC Bangladesh and community followed the core methodology (described above).
<b>India</b>	In India, the methodology was adapted to reflect country context: <ul style="list-style-type: none"> <li>• The NHRC India hosted the Mission 1 stakeholder consultation and participated in dialogue with people of diverse SOGI.</li> <li>• The NHRC India subsequently determined they would 'await the judgment of Supreme Court' on the appeal of the Delhi High Court judgment on section 377 of the Indian Penal Code (relating to criminalization of sex between men).</li> <li>• A consultant prepared an independent National Report on the response of the NHRC India to SOGI-related rights issues (based on publicly available information).</li> <li>• The independent National Report was shared with the NHRC India.</li> </ul>
<b>Nepal</b>	In Nepal, the NHRC Nepal and community followed the core methodology.

<sup>25</sup> The Background Briefs are available at: <http://asia-pacific.undp.org/practices/hiv/aids/Publications.htm> and <http://www.idlo.int/english/WhatWeDo/Programs/Health/Pages/Publications.aspx>.

<b>Pakistan</b>	<p>In Pakistan, the methodology was adapted to reflect the country context and the fact that the Pakistan National Commission for Human Rights (Pakistan NCHR) was established in 2012 and was not operative during the period of the NHRI SOGI Project.</p> <p>Alternative rights reporting mechanisms were reviewed in Pakistan. A consultant was engaged to conduct a review and analysis of available rights reporting mechanisms and SOGI.</p>
<b>Sri Lanka</b>	<p>In Sri Lanka, the methodology was adapted to reflect country context:</p> <ul style="list-style-type: none"> <li>• The HRC Sri Lanka elected to participate in informal meetings with IDLO only.</li> <li>• A consultant prepared an independent National Report on the response of the HRC Sri Lanka to SOGI-related rights issues (based on publicly available information).<sup>26</sup></li> <li>• The independent National Report was shared with the HRC Sri Lanka.</li> </ul>
<b>Indonesia</b>	<p>In Indonesia, Komnas HAM and the community followed the core methodology.</p>
<b>Philippines</b>	<p>In the Philippines, the CHR Philippines and the community followed the core methodology.</p>
<b>Timor-Leste</b>	<p>In Timor-Leste, the methodology was adapted to reflect country context:</p> <ul style="list-style-type: none"> <li>• Missions 1 and 2 were combined under the PDHJ's Monthly Human Rights Discussion Meeting.</li> <li>• At the invitation of PDHJ, people of diverse SOGI participated in this meeting.</li> <li>• A consultant prepared an independent National Report on the response of the PDHJ to SOGI-related rights issues (based on publicly available information).</li> <li>• The independent National Report was shared with the PDHJ; the PDHJ provided substantive feedback on the independent National Report, resulting in a fully validated and useful document.</li> </ul>

<sup>26</sup> The Independent National Report on Sri Lanka did not find examples of initiatives undertaken by the HRC Sri Lanka concerning SOGI-related rights (report based on publicly available information only). For this reason, there are no case studies from Sri Lanka in the analysis below.

## 5. THE NATIONAL HUMAN RIGHTS INSTITUTIONS – SOGI-RELATED INITIATIVES

### Summary of Project Engagement with NHRIs

Engagement with the NHRIs varied from country to country depending on NHRI schedules, resources, familiarity with SOGI-related rights and capacity. The response and efforts of NHRI leaders across the region demonstrates the importance of strong and committed leadership in advancing human rights. A summary of engagement and processes with each of the NHRIs is included at Annex 7.

### Summary of NHRI Initiatives Protecting, Promoting and Addressing SOGI-related rights

Recognizing that there are a variety of functions common to NHRIs from the Asia Pacific Region, the ACJ Report recommendations are structured under four broad categories, which encompass a majority of the mandated functions of NHRIs: (A) capacity building and research; (B) education, promotion and dialogue; (C) monitoring; and (D) advocacy.

This Report will review and analyze the initiatives and achievements of NHRIs under these four categories.

#### A. ACJ Recommendation: Capacity Building and Research

In brief, the ACJ Report recommends that NHRIs:

- build the capacity of the institution to respond to SOGI-related rights;
- foster relationships with the community of people of diverse SOGI;
- inform themselves of domestic and international research on SOGI-related rights violations;
- undertake research on SOGI-related discrimination; and
- document the domestic impact of laws which are selectively enforced against or criminalize people of diverse SOGI.

'Capacity building and research' represents the entry point for NHRIs on SOGI-related rights. A majority of the South Asian and Southeast Asian NHRIs involved in the Project have taken action to inform themselves and build their internal capacity in respect of the rights of people of diverse SOGI. Highlight initiatives on capacity building and efforts to foster relationships with the community of people of diverse SOGI are outlined below.

#### *South Asia*

The NHRC India specifically recognizes the need to protect the human rights of the people living with, and affected by, HIV. The website of the NHRC India indicates that a Member of the Commission has been designated to serve as the focal point on HIV-related matters.<sup>27</sup> There is no evidence of a specific NHRC India focal point for SOGI; however, through its work on HIV, there has been some NHRC India engagement on the rights of key affected populations, including people of diverse SOGI.

The NHRC India and the Centre for Advanced Studies in Human Rights at Rajiv Gandhi National University of Law organized a National Seminar on 'Gender Issues in India: Sensitization, Reflection and Solutions' in October 2012.<sup>28</sup> The aim and objective of this seminar was primarily to sensitize people on gender issues, and the agenda included transgender rights.

<sup>27</sup> The website of the NHRC India is available at: <http://nhrc.nic.in/hrissues.htm#no19> (the currency and accuracy of information on this website has not been confirmed).

<sup>28</sup> This meeting was held from 6 -7 October 2012 at RGNUL in Patiala, Punjab, India; available at: <http://studentatlaw.in/national-seminar-gender-issues-rgnul-nhrc/>

The NHRC Nepal has demonstrated an ongoing commitment to building institutional capacity to respond to the rights of people of diverse SOGI. The NHRC Nepal created an LGBTI focal point within the institution in 2005, and formally commenced an institutional relationship with Blue Diamond Society, the national network of LGBTI and people of diverse SOGI, in 2006.

The NHRC Nepal strengthened its commitment to the rights of people of diverse SOGI under the Strategic Plan 2011-14. The Strategic Plan sets out seven priority areas, with Strategic Priority 7 being 'promotion and protection of collective/group rights.' This priority includes specific reference to people of diverse SOGI under the subheading of 'minority rights,' which stipulates:

*'The rights of minorities based on ethnicity, culture, religion, language, origin, sex and caste is an important human rights issue. Respect of their rights would help ensure equality and equity among them. The NHRC Nepal primarily plans to monitor and advocate on the rights of minorities, rights of people with disabilities and SOGI groups.'*<sup>29</sup>

In February 2012, prior to the commencement of the NHRI SOGI Project, the NHRC Nepal participated in a meeting hosted by Blue Diamond Society (Nepal Advocacy Meeting).<sup>30</sup> The participation of 34 representatives of the NHRC from across Nepal, evidences the NHRC Nepal's significant commitment to SOGI-related rights.<sup>31</sup> At this meeting, the NHRC Nepal committed to initiate an internship for a representative of the LGBTI community at the office of the NHRC Nepal for the purposes of promoting NHRC Nepal understanding of LGBTI rights, and building community capacity in human rights. The same month, the NHRC Nepal realized this commitment, welcoming a Blue Diamond Society nominated representative to commence working as an intern at the NHRC Nepal.

### *Southeast Asia*

Between 2002 and 2007, KOMNAS HAM had a Sub-Commission which handled special groups, including people of diverse SOGI. This Sub-Commission was responsible for research, education, monitoring and mediation of the rights of special groups. The Sub-Commission also undertook, capacity building for other KOMNAS HAM staff. The Sub-Commission was discontinued under a restructure.

In order to increase the capacity of staff, from time to time, KOMNAS HAM also sends staff to national and international forums for training on issues related to SOGI. For example:

- In 2007, KOMNAS HAM sent staff to attend the 'LGBTI and Human Rights' international training course hosted by the Swedish International Development Cooperation Agency, the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (RFSL) and the Swedish Association for Sexuality Education (RFSU) (Stockholm, Sweden); and
- In 2011, KOMNAS HAM sent two staff of the Sub-Commission on Education and Guidance to a training workshop on 'Sexuality, Gender, Health and Sexual and Reproductive Rights' hosted by the Sexuality Forum Indonesia. These staff then led socialization and internal training on the rights of people of diverse SOGI.

29 NHRC Nepal Strategic Plan 2011-14.

30 The National MSM and Transgender Human Rights Advocacy Meeting with the National Human Rights Commission under the South Asia Regional HIV/AIDS Program, DIVA (Diversity in Action). The NHRC Secretary attended this meeting and addressed participants on the Yogyakarta Principles and SOGI-related rights issues in Nepal.

31 The 34 representatives of the NHRC Nepal that participated in this meeting were from the central NHRC Nepal office, the Regional Offices of Pokhara, Biratnagar, Nepalgunj, Dhangadi and Janakpur, and the Sub-Regional Offices of Butwal, Khotang and Jumla.

During meetings in early 2013, the newly appointed Commissioners of KOMNAS HAM queried whether an internal structure or mechanism focused on SOGI should be reinstated, to allow KOMNAS HAM to better respond to SOGI-related rights issues.

The current Chair of the CHR Philippines established LGBTI and HIV-related rights as one of the Commission's emerging priorities. The Chair also established and leads the CHR Philippines' HIV Working Group, which has engaged the assistance of UNAIDS and TLF Share, an NGO for MSM and transgender people.<sup>32</sup> The HIV Working Group agreed to prioritize interventions at sites where HIV incidence, especially among MSM and transgender people, is rapidly increasing; and identified three priority intervention areas:

- Developing a policy on HIV/AIDS and SOGI; this policy is scheduled for adoption by the CHR Philippines en banc in 2013 and shall be the CHR Philippines' main tool for policy reform and advocacy;
- Advocating for, and monitoring, the State's accountability through the establishment of national human rights standards on HIV/AIDS and SOGI; and
- Strengthening CHR Philippines' redress mechanisms for, and documentation of, SOGI or HIV-related human rights cases.

Over the past three years, the CHR Philippines conducted a number of institutional capacity building activities, including:

- Holding internal dialogues with key CHR Philippines officials on HIV, these dialogues included discussions on the vulnerabilities of MSM and transgender people (2010 and 2011);
- Conducting capacity building workshops on HIV and SOGI for CHR Philippines personnel in Cebu City and Davao City (2012);<sup>33</sup> and
- Launching an internal online survey to gather baseline information on the capacity needs of the CHR Philippines on SOGI and HIV (2012).

The PDHJ of Timor-Leste specifically considered whether the LGBTI community should be a focus group for the PDHJ during Strategic Plan planning sessions in May 2010. Following discussion, it was concluded that, although there is inadequate legal protection afforded to LGBTI persons under Timor-Leste law, LGBTI persons in Timor-Leste do not experience systematic or generalized violations of their rights. On this basis, the PDHJ did not select LGBTI as a priority focus group under the Strategic Plan.<sup>34</sup>

Notwithstanding this, SOGI and HIV-related human rights fall within the scope of the PDHJ's mandate to protect and promote human rights and fundamental freedoms. The PDHJ publicly noted that it would respond to discriminatory acts against the LGBTI community as part of its broader response to discrimination.<sup>35</sup> On 27 March 2013, the PDHJ's Monthly Discussion Meeting focused on LGBTI rights and concluded:

- there is scope for district level relationships between PDHJ and LGBTI organizations; and
- the PDHJ can work with ISEAN-HIVOS to improve people's understanding of LGBTI rights and to empower people of diverse SOGI to demand equality.

<sup>32</sup> The working group is comprised of a number of CHR Philippines units demonstrating Commission wide engagement: The Assistance and Visitorial Office; the Human Rights Education and Research Office; the Women Human Rights Center; the Child Rights Center the NGO, Civil Society and Media Cooperation Office; the Legal and Investigation Office, and the Field Operations Office.

<sup>33</sup> The capacity building workshops on HIV and SOGI were held in 24 September 2012 (in partnership with UNAIDS and TLF Share) and 19 November 2012, respectively.

<sup>34</sup> UNDP technical assistance notes, developed for the PDHJ Strategic Plan planning sessions, May 2010.

<sup>35</sup> PDHJ Monthly Discussion Meeting on 27 March 2013.

In June 2013, PDHJ invited IDLO, UNDP, and NGO partners to conduct a one day seminar on HIV and human rights, with a view to building staff understanding of discrimination, and staff sensitivity towards people living with HIV and people of diverse SOGI.

Notably, the PDHJ includes a reference to sexual orientation in the Provedor's declaration when taking-up office. This declaration includes the words "I will carry out my functions without discrimination on any ground such as (...) sexual orientation."<sup>36</sup>

## **B. ACJ Recommendation: Education, Promotion and Dialogue**

In relation to education, promotion and dialogue, the ACJ Report recommends that NHRIs:

- provide a platform for and facilitate dialogue between people of diverse SOGI and key stakeholders (including law and justice sector actors, social service providers, religious leaders);
- provide human rights education and information to people of diverse SOGI;
- build the sensitivity and capacity of law and justice sector stakeholders (including police), teachers and the Ministry of Education, health professional and the media to the rights of people of diverse SOGI.

With the exception of the NHRI Nepal and KOMNAS HAM, NHRIs cited few examples of initiatives designed to facilitate dialogue or build the capacity of external stakeholders on SOGI-related rights. Southeast Asian NHRIs showed particular strength in providing human rights education to people of diverse SOGI.

### *South Asia*

The NHRC India has approached LGBTI rights from the perspective of HIV and human rights. The NHRC India's website indicates they have launched a multi-media campaign to disseminate information on human rights and HIV to various target groups.<sup>37</sup> This includes the 2011 'Know Your Rights: Human Rights and HIV/AIDS' information booklet published by NHRC India.

At the Nepal Advocacy Meeting, the NHRC Nepal committed to:

- working with the Nepal police when a member of the LGBTI community is arrested or charged, upon the request of the LGBTI community (discussed in more detail below); and
- advocating for the promotion and protection of LGBTI rights.

The NHRC Nepal acted on the second of the above commitments in July 2012 when it responded to two requests of Blue Diamond Society, by writing to the Electoral Commission and the Ministry of Finance to advocate for the rights of people of diverse SOGI. The NHRC Nepal letter to the Electoral Commission noted the security issues and harassment that transgender people experience when voting (voting queues are gender segregated – male and female) and expressed its concern that the Electoral Commission provide a safe and secure environment for all voters. The NHRC Nepal letter to the Ministry of Finance expressed its concerns that the appropriate budget be made available for skills development of people of diverse SOGI.

### *Southeast Asia*

In 2006, KOMNAS HAM held a series of focus group discussions (FGDs) with government officials in Merauke, Surabaya, Batam and Medan, seeking their opinions on the stigma and discrimination experienced

<sup>36</sup> Article 15: 'Taking-up of Functions' of Law No. 7/2004 – Approving the Statute of the Office of the Ombudsman for Human Rights and Justice, Timor-Leste.

<sup>37</sup> <http://nhrc.nic.in/hrissues.htm#no19>

by people living with HIV. The results of these FGDs are compiled in the KOMNAS HAM publication *Stigmatization and Discrimination of People Living with HIV*.<sup>38</sup>

KOMNAS HAM is cognizant of the need for greater understanding of human rights by the LGBTI community and began facilitating human rights training in 2009 with a training in Malang. In 2010, KOMNAS HAM partnered with Forum for Transgender Communications of Indonesia (FKWI) to facilitate a second training. From this training, one transgender participant was chosen to become the Ambassador for Transgender Human Rights, with the aim of promoting and advancing LGBTI rights.

KOMNAS HAM also recognizes the need to increase government understanding of LGBTI rights. In 2011, KOMNAS HAM led a two-day FGD to develop a training curriculum on LGBTI rights. The first day brought together NGOs, government officials and law enforcement personnel. This FGD resulted in the recommendation that KOMNAS HAM prioritize training with the institutions most influential in determining the fulfilment of the rights of the LGBTI community. On the second day, organizers mapped potential candidates for training and developed a training curriculum based on the input of stakeholders. KOMNAS HAM then utilized this curriculum to facilitate a human rights training on SOGI, with government officials.

At the international level, KOMNAS HAM and the Asia Pacific Forum co-hosted a regional workshop on the role of NHRIs in the implementation and promotion of the Yogyakarta Principles in 2009.<sup>39</sup> KOMNAS HAM also hosted the Asia Pacific Forum Annual Meeting in 2010, at which the ACJ Report was presented and participants engaged on the issue of SOGI and human rights.

In Cebu City, the CHR Philippines are currently involved in discussions paving the way for a CHR Philippines led dialogue with public and private schools on the prejudices faced by LGBTI students.

In March 2013, the PDHJ of Timor-Leste responded to a request from ISEAN-HIVOS, an NGO working with the LGBTI population in Timor-Leste, to deliver a human rights discussion and training session. At this session, participants discussed how they could foster closer collaboration and working relationships, including the district level relationships and representation of the LGBTI community.

### C. ACJ Recommendation: Monitoring

The ACJ monitoring recommendations focus on:

- recognition of the vulnerability of people of diverse SOGI to rights violations
- ensuring that people of diverse SOGI are included in NHRI activities
- documenting and responding to issues of discrimination brought by people of diverse SOGI and ensuring that NHRIs' complaints mechanisms are accessible;

Some of the involved NHRIs have a defined mandate to monitor and respond to SOGI-related rights, whilst others have construed their mandates expansively to address and uphold SOGI-related rights and non-discrimination.

#### *South Asia*

The NHRC Bangladesh acknowledges that it has the mandate to monitor the rights of transgender people, *hijras* or people living with HIV. The Chairperson of the NHRC Bangladesh stated that if there is an instance of a transgender person, *hijra* or person living with HIV being discriminated against with regard to health care

<sup>38</sup> *Stigmatization and Discrimination of People Living with HIV* (in Bahasa Indonesia); available at: <http://www.komnasham.go.id/informasi/images-portfolio-6/rekam-media/359-odha-di-lampung-masih-alami-diskriminasi>

<sup>39</sup> Participants included representatives from the national human rights institutions of Australia, Indonesia, Jordan, Malaysia, Nepal, New Zealand, Palestine, South Korea and Thailand.



services or in the community, the NHRC Bangladesh would deal with the matter.<sup>40</sup> The Chairman stated: “With regard to the recognition of [HIV and SOGI-related] rights (...) if you look at their rights from the principles of non-discrimination, they have the right to enjoy every human right that any other citizen in the country enjoys and they cannot be discriminated [against].”

In late 2012, the NHRC Bangladesh planned to commence receiving complaints online through its website. This will increase the accessibility of the complaints mechanism, particularly for people who experience stigma and discrimination. The NHRC Bangladesh complaint form is designed to recognize diverse gender (male, female, and other). The Chairperson of the NHRC Bangladesh noted that even if people of diverse SOGI and people living with HIV are not specifically named, they are captured under the language used by the NHRC Bangladesh to protect vulnerable groups, marginalized groups and minorities.<sup>41</sup>

The website of the NHRC India states it is “deeply concerned about the need to protect the human rights of [people living with, and affected by, HIV], the Commission has been redressing individual cases relating to discrimination faced by [people living with HIV].”<sup>42</sup>

The Indian *Protection of Human Rights Act 1993* establishes the national level Commission as well as State Human Rights Commissions (SHRC). The Act sets out provisions to avoid duplication of cases and transfer of cases, as necessary. A number of State Human Rights Commissions of India have demonstrated noteworthy accessibility and commitment to SOGI-related rights, by receiving and responding to complaints lodged by transgender individuals. A number of these complaints are discussed as case studies below. These examples are sourced from media reports and from informal interviews with community representatives; the formal outcomes of these cases were not readily available.

The NHRC Nepal has also been active in monitoring the rights of people of diverse SOGI. On 18 March 2007 in Nepal, 26 people of diverse SOGI were arrested and kept in detention. Blue Diamond Society made a complaint to the NHRC Nepal through regular processes and a majority of the involved people made statements to the Complaints Handling Officer at the NHRC Nepal. The NHRC Nepal responded quickly and appointed a high level team to monitor the situation, including the LGBTI focal point, and two Directors.

In an active effort to formally recognise transgender people through the complaints management system, in early 2012 the NHRC Nepal resolved to amend its complaints form to stipulate ‘other’ gender as well as ‘male’ and ‘female’.

The NHRC Nepal has also supported SOGI-related rights interventions that have not been registered under its formal complaints system. In September 2012, the NHRC Nepal, in collaboration with Nepal Police Human Rights Cell, Blue Diamond Society and other NGOs, intervened in an alleged case of torture against a woman of diverse SOGI. The NHRC Nepal and partners mediated a consensus between the woman and her husband, and supported the woman to move to a safe house.

At the time of preparing the National Report, the NHRC Nepal was investing resources in strengthening its archiving systems and data collection. In late 2012, there were three LGBTI cases registered with the NHRC Nepal under investigation. All three cases were lodged in early 2012 and pertained to the alleged torture of transgender people by the police following arrest on charges of sex work. The NHRC Nepal sent a letter to the police expressing its concern that it had been advised by the involved transgender people, that torture had taken place.

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40 Statement documented in Bangladesh National Report, NHRI SOGI Project 2012-13.

41 Statement documented in Bangladesh National Report, NHRI SOGI Project 2012-13.

42 NHRC India website, Other Programmes and Human Rights issues taken up by the Commission; available at: <http://nhrc.nic.in/hrissues.htm>.

### Case Study 1: West Bengal State Human Rights Commission

#### *Manabi Banerjee - discrimination and the right to employment (2003)*

Ms. Manabi Banerjee is a transgender person who lives as a woman in her private life and as a man in public. Ms. Banerjee was employed as a college professor in West Bengal, and lived on campus in teachers' quarters. In 2003, teachers forced Ms. Banerjee to move out of the teachers' quarters on the basis of her gender identity, called her a *hijra*, and accused her of child abuse. Ms. Banerjee filed a complaint with the West Bengal SHRC on the basis of the discriminatory behavior against her.

The West Bengal SHRC served a show-cause notice on the college.

### Case Study 2: Karnataka State Human Rights Commission

#### *Representatives of the hijra community and Sangama - Illegal detention and police abuse (2008)*

In late 2008, five *hijras* were arrested by the police and taken to the Girinagar Police Station. At the station, they were allegedly assaulted by the police, including the Assistant Commissioner of Police. Charges of wrongful restraint and extortion were laid against the *hijras*. The group appeared before a magistrate on the same night and were remanded in custody. All through the process, the *hijras* were handled by male police. No medical treatment was offered for injuries allegedly caused by police assault.

While in custody, the *hijras* sought help from an NGO called Sangama.<sup>43</sup> When the Sangama crisis team members reached the police station, they claim they were verbally and physically assaulted by the police officers. Charges were also laid against the Sangama crisis team (related to unlawful assembly, rioting and obstructing Government officials in performing their duty). The NGO crisis team members also appeared before a magistrate, and were also remanded in custody.

Around 150 human rights activists and lawyers from various organizations gathered outside the police station and attempted to negotiate the release of the *hijras* and the Sangama crisis team. The *hijras* and the crisis team were eventually released on bail two days later. A complaint was made to the Karnataka SHRC. The Karnataka SHRC ordered a detailed report from the Commissioner of the Police within 6 weeks.

### Case Study 3: Maharashtra State Human Rights Commission

#### *Laxmi Narayan Tripathi - the right to vote (2009)*

In 2009, Ms. Laxmi Narayan Tripathi moved the Maharashtra State Human Rights Commission in Mumbai on the matter of the right to vote for transgender people (in the State Assembly polls). Ms. Tripathi lodged a complaint demanding the Government extend the fundamental right to vote to eunuchs and transgender people. She notes in her complaint "[T]here is a gross violation of the human rights of eunuchs in Maharashtra. We are not provided with ration cards and not permitted to vote."<sup>44</sup> In lodging her complaint, Ms. Tripathi was supported by four law students.

In response, the Maharashtra SHRC issued notices to the Chief Secretary of the Maharashtra State Government with a direction to ensure that departments concerned with ration cards and voter ID cards filed a reply to Ms. Tripathi's complaint by a set date. The Maharashtra SHRC also directed the State Government to detail action taken/to be taken note in their reply.

<sup>43</sup> Sangama works on rights and health issues for the SOGI communities in Karnataka.

<sup>44</sup> <http://news.outlookindia.com/items.aspx?artid=666036>

### Southeast Asia

KOMNAS HAM's complaints management system allows them to review and disaggregate data, including data on complaints related to SOGI. KOMNAS HAM reports they received a total of 24 cases related to SOGI between 2010 and 2012. Fourteen of these complaints were related to the right to justice, specifically concerning police abuse at police stations, six complaints related to the right to freedom of expression, three cases concerned the right to personal security and liberty, and one case related to the rights of a child.

The CHR Philippines report that in Cebu City, its efforts to engage the LGBTI community empowered the local transgender organization to claim their rights, and resulted in the Commission receiving its first complaint related to hate crimes against a transgender person. The regional CHR Philippines office has made a commitment to investigate these complaints.

In Timor-Leste, desk review research and interviews with the UNDP technical assistance team to the PDHJ, did not reveal records of complaints of homophobic acts, violent or non-violent, against LGBTI persons made to the PDHJ.<sup>45</sup> This was verified by the PDHJ on their review of the National Report.<sup>46</sup>

### D. ACJ Recommendation: Advocacy

The ACJ Recommendations related to advocacy include advocating for:

- the review and repeal of laws discriminatory to people of diverse SOGI and for the end of disproportionate enforcement of laws against people of diverse SOGI;
- the application of international human rights instruments;
- governments to ensure transparent and independent police complaint mechanisms are in place; and
- the elimination of stigma and discrimination by social and health service providers.

While there are standout examples of advocacy initiatives across the region, overall such examples are few in number. It appears there is still some reluctance to engage fully in advocacy.

### South Asia

In October 2012, the NHRC Bangladesh submitted a report as part of the State's participation in the 16<sup>th</sup> session of the UN Human Rights Council Universal Periodic Review (UPR). For the first time, the NHRC Bangladesh added a section on other minority groups which directly advocated for the rights of people of diverse SOGI. The report of the NHRC Bangladesh stated:

*'Excluded groups (including Dalits and transgenders) remain some of the poorest people in Bangladesh and face marginalisation and discrimination. In addition the NHRC Bangladesh notes that the Government of Bangladesh did not respect the recommendations with respect to sexual minorities. The NHRC [Bangladesh] understands the need for the law to be in harmony with the cultural and social mores of the people. Nevertheless, the NHRC Bangladesh believes that it is now time to ensure that all groups, including those who are transgender, intersex or sexual minority, are protected from discrimination.'*<sup>47</sup>

This statement is particularly significant in light of the Bangladesh response to the recommendations arising out of the 4<sup>th</sup> Session of the UPR in 2009. The 2009 UPR process resulted in 42 recommendations

45 The 2009 Annual Report provides: out of the 234 complaints lodged with PDHJ in 2009, 92 fell outside of PDHJ's mandate, 50 were forwarded to other institutions (as they were already being investigated by these other institutions), 74 complaints were on alleged human rights violations, 138 on maladministration and abuse of power and 22 on corruption.

46 The PDHJ confirmed that as of the end of 2012, the PDHJ had not received any complaints dealing specifically with LGBTI rights.

47 Stakeholder Report Universal Periodic Review – 2nd Cycle, National Human Rights Commission, Bangladesh, October 2012, 5; available at: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session16/BD/NHRC\\_UPR\\_BGD\\_S16\\_2013\\_NationalHumanRightsCommission\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session16/BD/NHRC_UPR_BGD_S16_2013_NationalHumanRightsCommission_E.pdf)

for Bangladesh. Recommendation 27 addressed sexual orientation and gender identity, specifically recommending Bangladesh:

- provide human rights training to law enforcement and judicial officers, with a specific focus on the protection of the rights of women, children and persons of minority sexual orientation or gender identity and adopt further measures to ensure protection of these persons against violence and abuse;
- consider abolishing section 377 of the Penal Code, which criminalizes sexuality against the 'order of nature'; and
- decriminalize same-sex activity between consenting adults and adopt further measures to promote tolerance in this regard.

The State of Bangladesh rejected these recommendations pertaining to sexual orientation and gender identity, stating:

*“the specific recommendation on sexual orientation cannot be accepted. Bangladesh is a society with strong traditional and cultural values. Same-sex activity is not an acceptable norm to any community in the country. Indeed, sexual orientation is not an issue in Bangladesh. There has been no concern expressed by any quarter in the country on this. Therefore, the recommendation is out of context.”*

In November 2000, the NHRC India, in partnership with National AIDS Control Organization, the Lawyers Collective, the UN Children’s Fund and UNAIDS, organized a National Conference on Human Rights and HIV/AIDS. The Conference was part of a series of consultations on health and human rights planned by the NHRC India, which elicited broad-based participation and enabled participants to scrutinize the status of HIV protection, control and health care within the framework of human rights.

Based on the deliberations of the National Conference, systemic recommendations on various aspects of human rights and HIV were sent to the relevant authorities in the Central Government and in various States. Recommendations covered consent and testing, confidentiality, discrimination in health care, discrimination in employment, women in vulnerable environments, children and young people, people living with HIV and marginalized populations. Notably, in relation to marginalized populations, the National Conference recommended that the national and state legislative bodies “legalize any sexual activities undertaken with consent between adults, and in connection with this adopt a clearly defined age for sexual consent.”<sup>48</sup>

These recommendations were included in the *Report of the National Conference on Human Rights and HIV/AIDS* (2000); the *NHRC India Annual Report 2001-2002*; and in the NHRC India ‘Know Your Rights: Human Rights and HIV/AIDS’ (2011) booklet. The Annual Report from 2001-2002 further states that a secondary purpose of these recommendations (framed as action points) is to complement the International Guidelines on HIV/AIDS and Human Rights<sup>49</sup> with practical solutions relevant to the Indian context.

The NHRC India ‘Know Your Rights: Human Rights and HIV/AIDS’ booklet, recognizes MSM and transgender people as vulnerable to HIV. The NHRC India lists other HIV-related advocacy initiatives on its website.<sup>50</sup>

In the 2007 case of *Sunil Babu Pant vs. Government of Nepal*<sup>51</sup> the Supreme Court of Nepal ordered the establishment of a cross sector Same-sex Marriage Committee. The Same-sex Marriage Committee was directed to undertake a study on the issues of same-sex marriage as well as the legal provisions of other countries. The Supreme Court directed the Government of Nepal to make legal provisions after considering the recommendations of the Same-sex Marriage Committee.

48 National Human Rights Commission of India, Annual Report 2001-12, 357; available at: <http://nhrc.nic.in/documents/AR01-02ENG.pdf>

49 OHCHR, International Guidelines on HIV/AIDS and Human Rights (Consolidated Version), 2006; available at: <http://www.ohchr.org/Documents/Issues/HIV/ConsolidatedGuidelinesHIV.pdf>.

50 The website of the National Human Rights Commission of India is available at: [http://nhrc.nic.in/bib\\_hiv\\_aids.htm](http://nhrc.nic.in/bib_hiv_aids.htm).

51 Writ No. 917 of the year 2064 BS (2007 AD).

The NHRC Nepal is one of seven appointed representatives of the Same-sex Marriage Committee.<sup>52</sup> As at the date of completion of the NHRC Nepal's National Report, the Same-sex Marriage Committee had not yet submitted its final report.

### *Southeast Asia*

In 2012, KOMNAS HAM received a complaint from representatives of Alliance Community Care Television Indonesia (AMPATI) in conjunction with reality TV singing competition, Indonesian Idol on private television station Rajawali Citra Televisi Indonesia (RCTI). The complaint stated that some participants in the program had experienced harassment and humiliation based on sexual orientation and gender identity. In addition, the complaint noted that there were indications that RCTI systematically bullied and exploited feminine men for the purpose of increasing television ratings.<sup>53</sup>

AMPATI sought support from KOMNAS HAM who facilitated mediation in a timely manner. Following the mediation, RCTI apologized to AMPATI and committed to improving the sensitivity and conduct of Indonesia Idol judges on the show in 2013.

In 2009-2010, KOMNAS HAM supported a case concerning criminalization of a person who had undergone sex reassignment surgery, HR. HR was biologically female but underwent sex reassignment surgery in 2006. In 2009, HR married a woman, DH. The couple did not get permission from DH's parents prior to getting married. DH's parents subsequently reported HR to the Jakarta Police. HR was arrested and detained on the charges of fake identity, kidnapping, and fraud. While in detention, the detention center refused to give HR gender appropriate accommodation and detained him in the female detention center because HR's identity card indicated that HR was female.

HR and DH lodged a complaint with KOMNAS HAM. KOMNAS HAM recommended that HR be removed from the female detention center, and that the detention be postponed. In response to KOMNAS HAM's recommendation, HR was eventually moved to a community clinic where he was held in isolation. When HR's matter went to trial, KOMNAS HAM became an *amicus curie*. In this role, KOMNAS HAM advocated that the State was not authorized to regulate a person's gender. The court confirmed HR's gender status as male.

The CHR Philippines' intervention in the Ang Ladlad Case (related to the participation of an LGBTI party in elections) illustrates how NHRIs can effectively advocate for LGBTI rights and raise awareness amongst the public and the judiciary on issues of discrimination.

In 2007, the Philippines Commission on Elections denied party-list accreditation to Ang Ladlad, an LGBTI political party. In 2009, Ang Ladlad, reapplied for accreditation with the Commission on Elections. Their application was again denied. The CHR Philippines issued an advisory on the matter stating the decision of the Commission on Election smacks of prejudice and discrimination and that the 'rights of LGBTIs are a human rights issue.'<sup>54</sup> The CHR Philippines also met with Ang Ladlad leaders to discuss the case. When Ang Ladlad elevated the case to the Supreme Court in 2010, the CHR Philippines filed a motion to intervene or to appear as *amicus curiae* (friend of the court). In late 2010, voting 12-3, the Supreme Court of the Philippines reversed the decision of the Commission on Elections refusing party-list accreditation to Ang Ladlad.<sup>55</sup>

52 The Same-sex Marriage Committee is comprised of one representative of the NHRC Nepal, one specialist medical doctor as designated by the Ministry of Health, one representative of the Ministry of Law, Justice and Parliamentary Affairs, one sociologist as designated by the Government of Nepal, one representative of Nepal Police (a specialist on the issue), one representative of Ministry of Population and Environment, and Advocate Hari Phuyal, who represented the petitioners in the case of Sunil Babu Pant v. Government of Nepal; available at: [http://www.njanepal.org.np/index.php?option=com\\_rockdownloads&view=file&Itemid=157&id=33:nja-law-journal-2008-issue-2](http://www.njanepal.org.np/index.php?option=com_rockdownloads&view=file&Itemid=157&id=33:nja-law-journal-2008-issue-2)

53 AMPATI had previously reported this to the Indonesian Broadcasting Commission (KPI), without any action or results.

54 CHR supports gay party bid to join party list polls: 'Comelec ban smacks of prejudice, discrimination.' Jocelyn Uy, Philippine Daily Inquirer, 15 November 2009.

55 Ang Ladlad LGBT Party v Commission on Elections, Republic of the Philippines Supreme Court, April 8, 2010; available at: <http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/190582.htm>

## 6. COMPARATIVE REVIEW - PAKISTAN

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The Pakistan NCHR was not operative during the period of the NHRI SOGI Project; Pakistan was included as a focus country under the NHRI SOGI Project as a parallel study of alternative rights reporting avenues for people of diverse SOGI in Pakistan.

A consultant reviewed rights reporting mechanisms and organizations with a mandate to address human rights with a view to considering the availability and accessibility of such mechanisms for the community of people of diverse SOGI (Pakistan Report). The Pakistan Report considered the legislation underpinning the newly established Pakistan NCHR, state institutions with a human rights mandate, and one non-governmental body with a human rights mandate.

The Pakistan Report concluded that its review of rights reporting mechanisms in Pakistan may represent a step in increasing the LGBTI community's understanding of avenues available for rights reporting and advocacy. Notably, significant challenges exist in Pakistan. The mandates and powers of the reviewed human rights bodies do not specially preclude them from responding to human rights violation experienced by people of diverse SOGI, however the socio-cultural climate in Pakistan means there may not be the will to address SOGI-related rights. Notably, people of diverse SOGI must be informed, empowered and feel sufficiently protected, before they are likely to utilize rights reporting mechanisms.

### The Pakistan National Commission for Human Rights

The Pakistan NCHR was established by law in 2012. Recognizing that provisions for the protection of minority groups, including people of diverse SOGI, are usually contained at a policy or strategy level rather than in legislation, the Report considered the legislation that established the Pakistan NHRC with a view to identifying potentially protective provisions.

The Pakistan Report notes that under Article 20 of the NCHR Act, the Pakistan NCHR has the power to give directions prohibiting disclosure of the identity of a person involved in certain aspects of the Commission's work, where it considers it is necessary to protect the privacy or human rights of any person. Examples of such persons include complainants as well as people who provide evidence or make submissions. This provision may be of value to people of diverse SOGI, as it would enable a person to make a complaint without publicly disclosing his/her identity.

### State Bodies with Human Rights Mandates

The Pakistan Report notes the following State bodies with human rights mandates:

- The Ministry of Human Rights (MOHR) is the lead department in the administration branch of the Government on human rights issues and has directorates in all provincial capitals. The MOHR website indicates that 11,004 cases related to human rights have been reported to the MOHR.<sup>56</sup>
- The Pakistan Report states that a review of publicly available documents failed to demonstrate the MOHR's position on SOGI rights or any disaggregation of case data based on SOGI.
- The Senate and the National Assembly Standing Committees on Human Rights are mandated to provide oversight on public policy, monitor the human rights situation in the country, receive complaints on violations, conduct inquiries, hold hearings, and make recommendations. Neither the Senate Committee nor the National Assembly Committee websites make available documents that reveal the position of the Committees on SOGI rights.

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<sup>56</sup> Data from the Ministry of Human Rights available at: <http://www.mohr.gov.pk/theminister.html> (accessed 14 November 2012)

- The Pakistan Report notes that given the involvement of these committees in law and policy, it may be strategically advantageous for the diverse SOGI community to maintain an awareness of the committees' agendas.
- Under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, the Supreme Court has jurisdiction when a question of enforcement of human rights is involved (as determined by the Chief Justice). Cases warranting urgent relief or constituting a pattern of human rights violations are taken up by the Court under its *suo motu* powers.
- The Pakistan Report notes that theoretically the Human Rights Cell of the Supreme Court has the potential to be a useful mechanism for people of diverse SOGI because it provides an expeditious and inexpensive remedy for citizens. In Pakistan, public interest litigation has paved the way for bringing various statutory reforms in matters of general public importance. The Pakistan Report recognizes that in practice, SOGI-related rights issues remain highly sensitive in Pakistan.

### Non-Governmental Body with a Human Rights Mandate

The Human Rights Commission of Pakistan (HRCP) was established in 1987. It is an independent, non-governmental organization that is member-based, with an elected council, a number of office bearers and a secretariat. According to its charter, HRCP works with people committed to the principles of the Universal Declaration of Human Rights and all other charters, covenants, and protocols of the United Nations related to human rights.<sup>57</sup>

HRCP represents a potential rights reporting mechanism to the extent that it is a promoter of human rights and an advocacy organization. Significantly, HRCP is a signatory to the Yogyakarta Principles. The HRCP Chairperson at the time was one of the group of experts to participate in the Yogyakarta process and meeting, and the Yogyakarta Principles bears her signature. However further research and direct interviews indicate that HRCP tends to function primarily as an advocacy group, by taking a public position in the media, public fora, and through liaison with other national and international organizations supporting human rights.

HRCP does not actively promote the SOGI-related rights but has supported some research and data generation on SOGI, and has either implicitly or explicitly recognized the rights of transgender people in a number of annual reports. HRCP initiatives on SOGI-related rights and HIV include:

- HRCP's State of Human Rights in Pakistan, 2010 (2010 Annual Report) notes the limited access to health in prisons; increasing rates of HIV in Pakistan; and the relief to transgender people granted by the Supreme Court litigation.<sup>58</sup>
- HRCP's State of Human Rights in Pakistan, 2011 (2011 Annual Report) recognizes the vulnerability of sexual minorities and supports the rights of the transgender community as upheld by the Supreme Court of Pakistan. The report notes "women from sexual minorities - the *hijra* or transgendered community who mostly identify themselves as women — were granted the status of citizens of the State, but the only employment opportunity provided to them by the State was as tax collectors out to harass defaulters. This official gesture not only demeaned them as people and reinforced cultural biases of their nuisance value, but also set a precedent for how they were to be treated socially."<sup>59</sup>

57 HRCP website available at: <http://hrcp-web.org/hrcpweb/>

58 Khaki v. Rawalpindi, Supreme Court of Pakistan, 12 December 2009.

59 Human Rights Commission of Pakistan, Annual Report – State of Human Rights 2011, March 2012, 157; <http://hrcp-web.org/hrcpweb/wp-content/pdf/AR2011-A.pdf>

A recommendation of the 2011 Annual Report included: “More women and transgender people need to be facilitated into the workforce on better terms of employment to make them a part of the social force and able to withstand family pressures and domestic violence.”<sup>60</sup>

The 2011 Annual Report records fact finding missions, it includes: 25 April 2011, Hyderabad, murder of two transgender individuals.

- In 2012, HRCP supervised a research report by an international law student interning at HRCP to explore the impact of the Supreme Court judgments on the rights of transgender people (the transgender local name of preference is *khwaja sara*) community.<sup>61</sup> The report, based on a review of available literature and on personal interviews with organizations and individuals, finds that after three years of public interest litigation, the *khwaja sara* community has finally found its ‘moment of public attention’. The report suggests that this moment may be of revolutionary value but it is fast slipping away, and much ground clearing will have to be done at social and cultural levels to improve public attitudes before *khwaja sara* can access education and employment opportunities.

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60 Ibid. 157.

61 Mr Waleed Malik, ‘Transgender Rights’, 2012; documented in the NHRI SOGI Project Pakistan Report.



## 7. COMMUNITY SURVEY FINDINGS

The NHRI SOGI Project sought to gather LGBTI community perspectives on NHRIs and the process of reporting rights violations. A peer administered survey questionnaire (largely structured for quantitative feedback) was proposed to collect and collate perspectives. Following initial discussions about the Project and its objectives, community organizations and advocates in the eight participating countries reviewed the questionnaire language and proposed adaptations, as appropriate. The basic form of the survey questionnaire is included at Annex 8. A majority of community organizations translated the survey into a local language. In all countries, the survey process was peer facilitated through small groups or one on one interviews.

In total, 489 LGBTI community representatives took part in the survey process, broken down by country as follows:

Bangladesh	100
India	64
Nepal	50
Pakistan	144
Sri Lanka	42
Indonesia	39
The Philippines	29
Timor-Leste	21
Total	489

### Community Survey Findings

#### *South Asia*

The majority of survey respondents in Bangladesh, India and Nepal indicated they had experienced a rights violation on the basis of their SOGI or HIV status. In Pakistan and Sri Lanka, slightly less than half of the survey respondents indicated they had experienced a rights violation on the basis of their SOGI or HIV status. Analysis of responses with community leaders revealed that weak knowledge of what constitutes a rights violation may have influenced the responses of respondents in Pakistan, potentially resulting in a reduced perception of experience rights violations. Equally in Sri Lanka, lack of knowledge about rights may have influenced responses; 21% of respondents indicated 'they were not sure' if they had experienced a rights violation.

Country	Respondents who experienced a rights violation on the basis of SOGI/ HIV status
Bangladesh	87%
India	66%
Nepal	76%
Pakistan	47%
Sri Lanka	48%

In Nepal and Sri Lanka respondents were able to clearly identify the legal issues involved or the rights that had been violated; these included violence or harassment by law enforcement personnel, assault, discrimination by the broader community or the State and unlawful arrest. In Bangladesh, India, and Pakistan, respondents demonstrated less capacity to describe the rights that had been violated, potentially pointing to low legal literacy.

In India, Nepal and Sri Lanka, a strong majority of respondents knew about the NHRI and its role, and credited an NGO or the newspaper for this knowledge. In Bangladesh only 30% of respondents knew about the NHRC Bangladesh, a rate which is likely to be related to the fact the NHRC Bangladesh is a young institution, established in 2009. In Pakistan, 26% of respondents knew that the State had passed a law establishing the Pakistan National Commission for Human Rights in May 2012, approximately 3 months prior to the survey process.

Across South Asia, rates of reporting of rights violations were extremely low. In total, 253 respondents indicated they experienced a rights violation. Of these 253 respondents, 24 respondents reported their rights violation to the police; ten respondents accessed a lawyer; and seven respondents reported to a government body (respondents were permitted to check all applicable boxes). In comparison, 54 respondents indicated they reported their rights violation to an NGO.

Equally low, were rates of reporting rights violations to the NHRI.

Country	Number of respondents that indicated they reported to the NHRI
Bangladesh	10 (of 100 respondents)
India	14 (of 64 respondents)
Nepal	2 (of 50 respondents)
Pakistan	N/A
Sri Lanka	9 (of 42 respondents)

Where respondents indicated they did not report a human rights violation to the NHRI, they were asked why not. In all five South Asian countries, the most frequently occurring answers were:

- I do not know about the NHRI.
- I do not know the process for using the NHRI.
- I do not know if the NHRI can help.

Sri Lankan and Indian respondents also indicated that they felt the NHRI was too far away. Nepali respondents provided additional information, noting that in some cases the national LGBTI network, Blue Diamond Society, was able to adequately resolve their issue, and there was no need to report it further.<sup>62</sup>

Respondents were asked what would encourage LGBTI community members to report to the NHRI. Across the five South Asian countries, the response 'having more information about the complaints process' occurred most frequently. Other frequently occurring responses included:

- having a peer to support a person to make a complaint to an NHRI (someone who knows about the NHRI and can guide a complainant through the process);
- more information about the NHRI; and

<sup>62</sup> Blue Diamond Society has had two or three lawyers on staff for the past four years.

- knowledge that the NHRI is sensitive to diverse SOGI.

In confirmation of the last bullet point above, one respondent stated “the NHRI needs to be more open to diverse sexual orientation and gender identity. I hid my sexual orientation in order to get their help.”

Respondents in Nepal provided additional written feedback to this question, noting that an assurance of confidentiality from the NHRI and wider dissemination of cases successfully resolved by the NHRI (on all human rights issues), would also encourage LGBTI community members to report to the NHRI.

Respondents were invited to provide written feedback on how they believed the NHRI could promote SOGI-related rights. Responses fell into three broad categories:

- suggestions that the NHRI sensitize the media and provide human rights education for society generally;
- proposals related to the NHRI’s capacity to lead dialogue and advocate for LGBTI rights with other State bodies and the police; and
- suggestions that the NHRI actively empower and enable the LGBTI community.

### *Southeast Asia*

The majority of survey respondents in Indonesia, the Philippines and Timor-Leste indicated they had experienced a rights violation on the basis of their SOGI or HIV status.

Country	Respondents who experienced a rights violation on the basis of SOGI/ HIV status
Indonesia	72%
Philippines	97%
Timor-Leste	60%

In Indonesia and the Philippines, respondents were able to clearly identify the legal issues involved or the rights that had been violated - these included violence or harassment by law enforcement personnel and discrimination. In Indonesia, respondents also indicated they experienced attacks by conservative groups (the Islamic Defenders Front. In the Philippines, respondents specifically indicated discrimination in the workplace and extortion. In Timor-Leste, respondents indicated they experienced verbal harassment and discrimination. The lack of detail in the Timor-Leste responses may suggest low legal literacy – equally it may suggest LGBTI in Timor-Leste experience limited rights violations. Informal discussions with partners at NGOs indicated that people of diverse SOGI in Timor-Leste did not face systematic abuse or discrimination.

In all Southeast Asian countries almost all respondents knew about the NHRI and its role (100% of respondents in Indonesia and Timor-Leste). In Indonesia and the Philippines respondents credited an NGO or the newspaper for this knowledge. In Timor-Leste, respondents indicated they had heard about PDHJ primarily from PDHJ information or government advertisements.

In Indonesia and Timor-Leste, rates of reporting of rights violations were low. Three and two respondents (respectively), indicated they reported their rights violation to the police or an NGO. In the Philippines, reporting rates were higher, with 9 out of the 28 respondents that experienced a rights violation, reporting that violation. Interestingly, in the Philippines, respondents reported to a wider variety of authorities: the police, local government, district government officials and NGOs.

In all countries, rates of reporting rights violations to the NHRI were low.

Country	Number of respondents that indicated they reported to the NHRI
Indonesia	9 (of 39 respondents)
Philippines	2 (of 28 respondents)
Timor-Leste	0 (of 20 respondents) <sup>63</sup>

Where respondents indicated they did not report a human rights violation to the NHRI, they were asked why not. In all three Southeast Asian countries the most frequently occurring answers were:

- I do not know the process for using the NHRI.
- The NHRI is too far away.
- I do not know if the NHRI can help.

Respondents were asked what would encourage LGBTI community members to report to the NHRI. Responses varied from country to country, but broadly, respondents indicated they needed more information about the complaints process and about the NHRI. In both the Philippines and Timor-Leste, respondents indicated it would be preferable if the NHRI accepted complaints in multiple languages. Timor-Leste also emphasized the importance of peer support for the complaints process.

Respondents were invited to provide written feedback on how they believed the NHRI could promote SOGI-related rights. Respondents in Indonesia stated: “When a case remains unresolved, the LGBT community feels discouraged from making further complaints.” Respondents in Indonesia also proposed:

- complainants needed to know they would be protected when making a complaint; and
- KOMNAS HAM has an important role advocating for LGBTI rights with other state actors.

Respondents in the Philippines emphasized that the CHR Philippines could promote SOGI-related rights by:

- following through on cases;
- lobbying for LGBTI rights to be included in anti-discrimination laws; and
- using the media to promote rights.

Respondents in Timor-Leste proposed the PDHJ should advocate for LGBTI rights with other State agencies, advocate for protective laws, and educate LGBTI communities on their rights.

<sup>63</sup> The figure of 0 is based on PDHJ input.

## 8. COMMENTS ON CAPACITY AND CATALYSTS FOR CHANGE

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NHRIs with well developed capacity to address SOGI-related rights issues tended to demonstrate common factors. These factors included, but were not limited to, strong and open leadership, the presence of an institutional focal point on SOGI or HIV (or marginalized or vulnerable groups) and commitment to communication with civil society, government and multilateral stakeholders.

In particular, subject to the size of an NHRI, the presence of an institutional focal point on SOGI, HIV or vulnerable populations sends a strong message that the NHRI is addressing these issues. The NHRI SOGI Project revealed that in many countries, a lack of awareness of NHRI processes or lack of awareness of the willingness of an NHRI to address SOGI-related rights, may contribute to the reticence of LGBTI individuals to approach a Commission. The knowledge that there is a sensitized officer designated to deal with LGBTI issues may go some way in overcoming this challenge. A focal point can also enhance communication, learning and sharing of advocacy materials, collaboration between the NHRI and NGOs, and support for human rights education.

A final and critical factor for catalyzing change is the role of the community of people of diverse SOGI. The experiences of this Project indicate that community unity and leadership, combined with diplomatic and persistent advocacy on LGBTI rights, gives rise to productive relationships with NHRIs, and fosters ongoing collaboration and partnership. The impact and importance of the efforts of the LGBTI community: lobbying and advocating on not only rights, but stigma, social and cultural issues, cannot be understated.

## 9. CHALLENGES

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Whilst the international community has progressed considerably in terms of putting SOGI-related rights on the agenda, there are a number of countries that remain firmly in opposition to this trend. Additionally, the sensitivity of LGBTI rights in domestic spheres remains high in, at the very least, some sections of society in all countries participating in the NHRI SOGI Project.

The sensitivity around LGBTI rights at national level leaves people of diverse SOGI vulnerable to discrimination or deprivation of their rights. Low awareness of human rights, weak enforcement of protective laws and high levels of stigma pose significant a significant challenge to LGBTI individuals being able to freely claim their rights. This type of environment also constitutes an impediment to the response to HIV, as stigma and criminalization impacts a person's ability to take charge of their health or access health services.

At an international level, the attempts of a number of states to delete language on SOGI from a resolution on extrajudicial executions at the 67<sup>th</sup> session of the UN General Assembly illustrates the resistance to SOGI-related rights.<sup>64</sup> In this instance, gender identity had been included as part of a list of vulnerable groups which states were being urged to protect.<sup>65</sup> There has also been a push from a number of countries at the UN Human Rights Council to promote an agenda that emphasizes traditional values. This agenda tends to emphasize patriarchal, mono-cultural norms and may include a definition of the composition of a family.<sup>66</sup>

The International Lesbian, Gay, Bisexual, Transgender and Intersex Association reports that 76 countries retain laws that criminalize people on the basis of their sexual orientation or gender identity.<sup>67</sup> In 2011, at least five states had laws which provided for the death penalty for homosexual relations between consenting adults.<sup>68</sup> Globally, anecdotal evidence suggests a conflation of issues, with so-called moral or religious perspectives impacting upon legal reasoning in court, in law making and in law reform. This has the effect of precluding a person from accessing the bundle of rights to which he or she is entitled, as a human being.

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64 A/RES/67/168 67<sup>th</sup> session of the General Assembly, 15 March 2013; available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/67/168](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/67/168); <http://www.ishr.ch/news/third-committee-holds-course-death-penalty-makes-historic-gains-sogi-rights>.

65 <http://www.ishr.ch/general-assembly/1427-third-committee-holds-course-on-death-penalty-makes-historic-gains-on-sogi-rights>.

66 <http://www.ishr.ch/council/376-council/1478-human-rights-council-must-take-an-unequivocal-stand-against-traditional-values>.

67 'State-sponsored homophobia: a world survey of laws criminalising same-sex sexual acts between consenting adults', International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA), Brussels, May 2011, 9. In contrast, the 2010 Global Fund Strategy on SOGI notes that sex between consenting adults of the same gender is criminalized in approximately 85 UN member states (The Global Fund Strategy in Relation to Sexual Orientation and Gender Identities, Global Fund to Fight AIDS, Tuberculosis and Malaria, 2010).

68 A/HRC/19/41; UN High Commissioner for Human Rights report states: 'In at least five countries the death penalty may be applied to those found guilty of offences relating to consensual, adult homosexual conduct.'

## 10. CONCLUSION AND RECOMMENDATIONS

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Notwithstanding significant progress in the recognition of rights at an international level, sexual orientation and gender identity remains a sensitive and challenging area of human rights. This must be changed, for the purposes of creating an equal and fair society in which individuals realize their potential and are protected from violence and discrimination. Strengthening the human rights protections for people of diverse SOGI is also essential for public health reasons. The protection of human rights is a key component of an enabling legal environment, which in turn is considered critical to the response to HIV. Rights violations, stigma and discrimination significantly impede upon access to health care services (prevention, treatment, care and support) and the adoption of responsible behavior to prevent HIV transmission.

In the years following the Yogyakarta Principles and the ACJ Report, we have seen a growing number of initiatives from NHRIs in Asia to tackle the rights violations and discrimination faced by people of diverse SOGI. However, communities of people of diverse SOGI still indicate a lack of understanding of NHRIs processes and capacity to take on SOGI-related issues. This indicates room for increased engagement and commitment to this area by NHRIs.

As a result of this Project, NHRIs and NHRI staff have a greater appreciation and understanding of the rights and vulnerabilities of people of diverse SOGI. Through the National Report process and community engagement, participating NHRIs successfully documented their engagement on SOGI and utilized their involvement in the Project to identify institutional capacity and institutional mechanisms through which they could address SOGI-related rights. In Bangladesh, Nepal, Pakistan, Indonesia, the Philippines and Timor-Leste, Project consultations and dialogues also enhanced networks and partnerships between NHRIs and communities of people of diverse SOGI.

Looking forward, it is important that NHRIs maintain momentum. Based on the findings from the community survey, the National Reports and in-country engagement, priority should be given to the following areas:

- *building institutional capacity and sensitizing NHRI staff*: As noted at the beginning of the report, while all participating NHRIs had some institutional exposure to SOGI-related issues, this exposure and learning does not necessarily reach all staff. A practical way to ensure that NHRI staff are equipped to deal with SOGI-related rights may include: creating opportunities to interact with people of diverse SOGI and strengthening staff understanding of the law and key issues faced by the LGBTI community.
- *continuing to engage, liaise with and partner with LGBTI groups and NGOs*: This can be done with a view to growing beyond the relationships based on personal ties or linked to specific leaders, to maintaining functioning, institutionally embedded relationships.
- *planning, strategizing and implementing activities designed to utilize the convening and advocacy powers of NHRIs*: This may include advocating for LGBTI rights with other State bodies, in particular the police. NHRIs are well positioned to engage with both state and non-state actors.
- *increasing human rights education for LGBTI communities, the broader community and the media*: A key part of NHRI mandates, human rights education contributes to broader acceptance of the principles of equality, non-discrimination, and universality of rights.

The movement to ensure people of diverse sexual orientation and gender identity have the same rights and responsibilities as heterosexual citizens, represents the front line of this century's struggle for equality. The NHRI efforts documented within this Report are commendable and demonstrate great leadership. It is anticipated that this Project re-energized and in some cases, initiated engagement on SOGI-related rights, and that this support will encourage NHRIs to continue their efforts, learn from the initiatives of their peers, and improve and advance their efforts to promote the rights of people of diverse SOGI.

## ANNEX 1. ACJ RECOMMENDATIONS

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### Introduction

These recommendations are based on the understanding that human rights apply to all people by virtue of their inherent dignity and humanity, and that every person is entitled to be treated humanely, irrespective of their origin and status.

The NHRIs which comply with the Paris Principles have the role of protecting and promoting the human rights of all persons. Their mandates therefore extend to the rights of those who suffer human rights violations on the basis of sexual orientation or gender identity.

There are a variety of functions common to Asia Pacific NHRIs, including research, education, monitoring, and advocacy and the recommendations of the ACJ are grouped under these functions.

### Capacity Building and Research

We recommend that NHRIs:

#### *Build NHRI Capacity*

1. Undertake an internal dialogue on issues relating to the human rights of persons of diverse sexual orientation or gender identity and build the capacity of the institution to understand the issues and to react appropriately.
2. Build relationships, consult and work with persons of diverse sexual orientations and gender identities, including CSOs, in order to inform the work of the NHRI in the promotion and protection of human rights generally and in relation to the rights of persons of diverse sexual orientation or gender identity.
3. Develop communication strategies for positive engagement with persons of diverse sexual orientations and gender identities. NHRIs should consider engaging with SOGI NGOs to ensure that their experience and expertise is utilised to ensure an effective communication outreach to the SOGI community.

#### *Conduct Research*

4. 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 sexual orientation or gender identity.
5. Identify gaps in that research and foster or undertake research to fill those gaps for example through universities and CSOs.
6. Foster or undertake research, documentation and the gathering of information on discrimination, including direct and indirect, multiple and intersecting forms of discrimination, on the basis of sexual orientation or gender identity including by non-State and private actors.
7. Facilitate studies with appropriate stakeholders on protecting the rights (including economic, social and cultural rights) of persons of diverse sexual orientations and gender identities in the context of local social and cultural traditions and religious beliefs.

#### *Document the Domestic Impact*

8. Identify and document at the domestic level:
  - i. human rights violations of transgender and intersex persons as a result of their inability to gain legal recognition or access legal documentation in the gender of their choice;



- ii. the impact (both direct and indirect) of laws criminalising same sex sexual conduct between consenting adults. The indirect effects might include an inability or unwillingness to access social services such as health and HIV prevention, and treatment and care services and a vulnerability to blackmail, extortion, and harassment;
  - iii. the extent to which public order and sex work offences are selectively or disproportionately enforced against persons of diverse sexual orientation or gender identity;
  - iv. the socio-economic impact of human rights violations and discrimination on persons of diverse sexual orientation or gender identity. For example, disproportionate incidences of poverty, limited employment opportunities and reported cases of trafficking or forced prostitution;
  - v. the extent to which stigma and discrimination limits access to social services including social protection schemes, income generation projects and health care services, including HIV prevention and treatment, and sexual health services;
  - vi. the disproportionate impact and application of other laws that may violate human rights in relation to sexual orientation or gender identity, for example vagrancy, pornography, and public nuisance laws;
  - vii. the issues faced by human rights defenders working on issues of sexual orientation or gender identity.
9. Share information amongst NHRIs about best practices in other jurisdictions amongst NHRIs.

### **Education, Promotion and Dialogue**

We recommend NHRIs:

#### *Facilitate a dialogue with key stakeholders*

- 10. Provide a platform for and assist persons of diverse sexual orientation or gender identity to engage in dialogue with all relevant groups including parliamentarians, the judiciary, judicial officers, law enforcement officials, providers of social services and community and religious leaders and thinkers on the promotion, protection and fulfilment of their human rights (including their economic, social and cultural rights).
- 11. Promote dialogue among progressive community and religious leaders and thinkers on the relationship between faith, religion, custom and tradition and sexual orientation or gender identity.
- 12. Find or provide neutral and safe places for a constructive engagement between persons of diverse sexual orientation or gender identity, their families and the wider community.
- 13. Foster dialogue with government agencies about the wider implications of discrimination including access to social services, employment, and health services including HIV prevention, treatment and care services.

#### *Raise awareness within the lesbian, gay, bisexual and transgender community*

- 14. Provide human rights education and information about remedies for human rights violations to persons of diverse sexual orientation and gender identity.
- 15. Disseminate and promote the Yogyakarta Principles, especially to those whose rights they affirm, including in local languages.
- 16. Support capacity building in the areas of legal literacy, remedies, human rights and advocacy skills for people of diverse sexual orientation and gender identity.

*Raise awareness within the judiciary and law enforcement*

17. Build the capacity of law enforcement officers, members of the judiciary, other judicial officers, lawyers, and the providers of social services (including health and HIV prevention, treatment and care services) to interact appropriately with persons of diverse sexual orientation or gender identity. This includes providing them with information on best practice and assisting in the development of protocols, as well as providing or fostering the provision of education and training. In particular, training should concentrate on how best to address violence and discrimination directed at persons of diverse sexual orientation or gender identity through supportive laws, policing, education and care.
18. Encourage the sharing of information between members of the judiciary and other judicial officers within and across jurisdictions in the region and the sharing of experiences from other regions where appropriate.
19. Encourage the sharing of information and best practice between law enforcement officers and those providing social services within and across jurisdictions in the region and share experience from outside the Asia Pacific region where appropriate.

*Raise awareness within the education system*

20. Include in the general human rights education conducted by NHRIs and others (including in schools) education on the human rights of persons of diverse sexual orientation or gender identity in order to nurture understanding of human pluralism and to foster the respect for human rights of all.
21. Educate and work with teachers and Ministries of Education and other educational professionals to protect and promote the human rights of students and teachers of diverse sexual orientation or gender identity, with a view to ensuring their full participation in school life. It is particularly important to ensure that such students (and teachers) are free from harassment, violence and bullying (both physical and psychological).

*Raise awareness within professional organisations and support services*

22. Engage with professional bodies with a view to promoting, respecting and fulfilling the human rights of persons of diverse sexual orientation or gender identity (including medical associations, bar associations, psychologists associations, and educational professional associations).
23. Engage with and educate the media on the human rights issues relating to persons of diverse sexual orientation or gender identity. Use the media in a creative manner as a platform to promote messages to the general population about the human rights of persons of diverse sexual orientation or gender identity and to promote a balanced approach by the media.
24. Encourage discussion between health professionals, and intersex and transgender people about the issues relating to medical procedures affecting them.
25. Network with parental/family associations to encourage understanding of persons of diverse sexual orientation or gender identity and build support systems to access parents/families accordingly.

**Monitoring**

We recommend NHRIs:

26. Consider the use of national inquiry powers to document and monitor the human rights situation of persons of diverse sexual orientation or gender identity.

27. Recognise persons of diverse sexual orientation and gender identity as groups that are vulnerable to human rights violations and monitor the progress towards ensuring the human rights (including economic, social and cultural rights) of persons of diverse sexual orientation and gender identity are respected, protected and promoted.
28. Ensure that persons of diverse sexual orientation and gender identity are included in NHRI activities, for example, in projects on trafficking, access to justice, health, housing, education and poverty.
29. Respond in an urgent manner to instances of torture as well as cruel, inhuman and degrading treatment of persons of diverse sexual orientation or gender identity.
30. Document and respond to issues of discrimination brought forward by persons of diverse sexual orientation or gender identity in order to assist them to find the appropriate remedy.
31. Ensure that NHRIs' complaints mechanisms (where these exist) are accessible to those who suffer human rights violations on the basis of their actual or perceived sexual orientation or gender identity. In particular, NHRIs should be able to receive complaints about discrimination, including by non-State and private actors.
32. Where there is no complaints function, NHRIs should advocate for all allegations of human rights violations perpetrated against persons of diverse sexual orientation or gender identity to be investigated thoroughly by the appropriate independent body and that those responsible are held accountable for their actions.
33. Pay attention to the rights of persons of diverse sexual orientation or gender identity who are detained, including in juvenile facilities. This includes, in particular, their right not to be subjected to torture or to cruel, degrading or inhuman treatment.

## **Advocacy**

We recommend that NHRIs consider advocacy in relation to:

### *The interpretation and amendment of domestic laws*

34. Advocate the review of existing laws to remove all laws that violate the human rights of persons of diverse sexual orientation or gender identity and ensure the application of all laws in a non-discriminatory manner.
35. Advocate the repeal or revision, as appropriate, of relevant domestic laws to decriminalise same sex sexual conduct between consenting adults.
36. Advocate the revision or removal of laws and policies that criminalize, penalise or prohibit diverse gender expressions.
37. Advocate uniform age-of-consent laws for heterosexual and same sex sexual conduct;
38. Advocate the removal of legal barriers to the distribution of sexual health information, including by providing exceptions to obscenity offences for such material.
39. Advocate the enactment of legal protections from hate crimes and prohibit vilification on the grounds of gender identity and sexual orientation.
40. Advocate the introduction of laws that make sexual assault of males a criminal offence, where they do not exist.
41. Advocate the enactment of anti-discrimination provisions that ensure protection and promotion of the human rights of persons of diverse sexual orientation and gender identity. Provisions should specifically prohibit discrimination on these grounds and cover actions by non-State and private actors. Areas

of discrimination of particular concern include employment, access to services including health care, education, accommodation, provision of identity documents, and access to welfare services.

#### *The enforcement of domestic laws*

42. Advocate the end of selective or disproportionate enforcement of laws (such as vagrancy, prostitution, assembly laws) with regard to persons of diverse sexual orientation or gender identity.
43. Advocate the end of the selective enforcement of criminal laws, including public order and sex work offences and particularly where this is used as a pretext for extortion or for harassing, assaulting, detaining and punishing persons of diverse sexual orientation or gender identity.
44. Consider engagement in litigation designed to promote the human rights of persons of diverse sexual orientation or gender identity, including providing information to those involved in such litigation and, where the mandate allows, taking action as an intervenor or amicus curiae.

#### *Application of international law*

45. Advocate for the application of the UN Declaration relating to human rights defenders, including human rights defenders in relation to sexual orientation or gender identity.
46. Continue to advocate for the ratification or accession to all international human rights instruments.
47. Promote the consideration of human rights issues in relation to sexual orientation or gender identity at the international level, including through inclusion of these issues where relevant in reports (including shadow reports) to Treaty Bodies, Special Procedures, the Universal Periodic Review and the Human Rights Council and by encouraging governments to support serious discussion of these issues in international human rights forums.

#### *The interpretation and application of religious and traditional laws and practices*

48. Advocate for an interpretation of religious and traditional law and practices that aligns with the Yogyakarta Principles.

#### *Provision of Services*

49. Advocate that governments ensure transparent and independent police complaint mechanisms are in place in order to help prevent and remedy instances of police exceeding their authority in policing of persons of diverse sexual orientation and gender identity, or involved in harassment, extortion and violence towards such groups.
50. Advocate for the elimination of stigmatisation and discrimination by social and health service providers which have been shown to limit the access by persons of diverse sexual orientation or gender identity to social and health services, including HIV services.
51. Advocate for the recognition of the gender identity of choice for transgender individuals, whether or not they have undertaken sex reassignment surgery. Such individuals should be accorded the same legal rights as other citizens and equal rights to passports and other identification documents that recognize the person's chosen gender identity. Transgender people should have the right to marry on the basis of their chosen gender.
52. Advocate for the provision of legal protections for persons of diverse sexual orientation or gender identity from being subject to treatment without informed consent, including aversion therapy or other medical interventions that purport to control or alter sexual orientation or gender identities. Such protections

should recognise the special position of children and the obligation to ensure that the 'best interests of the child' should be the determining factor in relation to decisions regarding medical treatment.

53. Advocate for governments and the medical profession to discourage the use of diagnostic categorisations, such as "gender identity disorder" which stigmatise transgender people as mentally ill and undermine the legitimacy of sex reassignment procedures.
54. Advocate the promotion of human rights programmes that reflect the full range of human rights (including economic, social and cultural rights) and remedies for the breach of those rights for all persons, including persons of diverse sexual orientation or gender identity.

## ANNEX 2. REFERENCE LIST AND FULL LIST OF PRIOR RELEVANT RESEARCH

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- The NHRI SOGI Project recognizes and builds upon existing research and studies including:
- UNDP, OHCHR, Asia Pacific Forum, Capacity Assessment Manual for National Human Rights Institutions, 2012
- J. Godwin, co-published by UNDP, UNFPA and UNAIDS, Sex Work and the Law in Asia and the Pacific, 2011
- UNDP, ESCAP and UNAIDS, Report of the Asia Pacific Regional Dialogue of the Global Commission on HIV and the Law, 2011
- United Nations Political Declaration on HIV/AIDS: Intensifying our Efforts to Eliminate HIV/AIDS 2011
- World Bank, The Global HIV Epidemics Among Men Who Have Sex with Men, World Bank South Asia Multi Country Global Fund Grant on HIV among men who have sex with men and transgender persons, 2011
- Stigma Index Reports (Bangladesh, India, Pakistan, Sri Lanka) (2011 – India, Tamil Nadu and Nepal)
- International Commission of Jurists, Sexual orientation, gender identity, and justice: a comparative law casebook, 2011
- ESCAP Resolution 67/9 Asia-Pacific regional review of the progress achieved in realizing the Declaration of Commitment on HIV/AIDS and the Political Declaration on HIV/AIDS, 2011
- ESCAP Resolution 66/10 Regional call for action to achieve universal access to HIV prevention, treatment, care and support in Asia and the Pacific, 2010
- Advisory Council of Jurists, Asia Pacific Forum for National Human Rights Institutions, ACJ Report: Human Rights, Sexual Orientation and Gender Identity, Advisory Council of Jurists, 2010
- J. Godwin, co-published by the UNDP and APCOM, Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific: An agenda for Action; 2010
- World Bank, Tacking HIV-related Stigma and Discrimination, 2010
- International Commission of Jurists, Sexual Orientation, Gender Identity and International Human Rights Law, Practitioners Guide No. 4, 2009
- The Global Fund Strategy in Relation to Sexual Orientation and Gender Identities, 2009
- UNAIDS Guidance Note, Addressing HIV-related Law at National Level, 2008,
- OHCHR, UNAIDS, The Handbook on HIV and Human Rights for National Human Rights Institutions, 2007
- UNAIDS & Office of the United Nations High Commissioner for Human Rights, International Guidelines on HIV/AIDS and Human Rights (2006 Consolidated Version)
- The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, 2005
- UNAIDS & Inter-Parliamentary Union, Handbook for Legislators on HIV/AIDS, Law, and Human Rights: Action to Combat HIV/AIDS in View of its Devastating Human, Economic, and Social Impact (Second reprint, May 2002)

## ANNEX 3. FULL PROJECT DESCRIPTION

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The Project was framed as follows:

### Overarching Project Goal

To strengthen the legal response to HIV, and promote an enabling legal environment in South Asia and Southeast Asia.

### Project Purpose

To assess the capacity of National Human Rights Institutions (NHRIs) to address human rights in relation SOGI and HIV South Asia and Southeast Asia.

### Project Outcomes

NHRIs and NHRI staff will have:

1. strengthened appreciation and understanding of the rights and vulnerabilities of people of diverse SOGI;
2. identified institutional capacity and mechanisms, and institutional strengths, weaknesses and opportunities to effectively address rights issues faced by people of diverse SOGI; and
3. enhanced networks and partnerships with communities of people of diverse SOGI.

### Project Outputs

1. National stakeholder consultations in each country;
2. National Reports from each of the NHRIs (National Reports); and
3. A Regional Report analyzing and synthesizing National Reports (this Report).

### Project Activities

1. Build NHRIs' sensitivity to the rights and specific vulnerabilities of people of diverse SOGI;
2. Review the mandate and mechanisms of NHRIs available to address rights issues faced by people of diverse SOGI;
3. Identify institutional strengths, weaknesses and opportunities to effectively address rights issues faced by people of diverse SOGI; and
4. Strengthen networks between NHRIs and communities of people of diverse SOGI.

### Geographic Focus

South Asia: Bangladesh, India, Nepal, Pakistan and Sri Lanka.

Southeast Asia: Indonesia, the Philippines and Timor-Leste.

## ANNEX 4. NHRI, COMMUNITY AND TECHNICAL PARTNER DETAILS

Institution		Key Contacts		Address		Phone		Website	
<b>South Asia</b>									
NHRC Bangladesh	Hon. Chairman Prof Mizanur Rahman; Mr Kazi Arfan Ashik, staff	Gulfeshan Plaza (11th Floor) 8, Sohid Sangbadik Saleena Parvin Sorok, Mogbazar, Dhaka - 1217, Bangladesh	+88 02 833 1492	www.nhrc.org.bd					
NHRC India	Dr Savita Bhakhry, Deputy Secretary (Research)	Faridkot House, Copernicus Marg, New Delhi, PIN 110001, India	+91 11 233 84012	www.nhrc.nic.in					
NHRC Nepal	Secretary Bishal Khanal; Mr Jayashwor Chapagain, LGBTI Focal Point	Harihar Bhawan, Pulchowk, Lalitpur G.P.O. Box: 9182, Kathmandu, Nepal	+977 (0)1 501 0015	www.nhrcnepal.org					
NHRC Sri Lanka	Hon. Commissioner Jezima Ismail, Ms Shirani Rajapakse, Director Education and Special Programmes (informal meetings only)	No. 165 Kynsey Road, Borella, Colombo 8, Sri Lanka	+94 11 269 4925/ 268 5980/268 5981	www.hrcsl.lk					
Bandhu Social Welfare Society -Bangladesh	Mr Shale Ahmed, Executive Director	99 Kakrail, 2nd and 3rd Floor Dhaka 1000, Bangladesh	+88 02 933 9898/935 6868/ 835 604	www.bandhu-bd.org					
Center of Legal Aid and Rights -India	Ms Laya Medhini, Director	8/51, Second Floor, Above CGHS Dispensary, Jungpura Extension, New Delhi, India	n/a	n/a					
INFOSEM- India Network for Sexual Minorities	Ashok Row Kavi	C/O Humsafar Trust, Old BMC Bldg, 1st & 2nd Floor, Nehru Road, Vakola, Santacruz, Mumbai - 400055	n/a	www.infosem.org					
The Blue Diamond Society- Nepal	Mr Sunil Babu Pant, President; Ms Manisha Dhakal, staff	Shivabhakti Marg no. 344 Khursanitar, Lazimpat-2, Kathmandu, Nepal	+977 (0)1 444 3350/400 0147	www.bds.org.np					
Naz Male Health Alliance- Pakistan	Mr Qasim Iqbal, Executive Director	House 44, Block K-2, Model Town, Lahore, Pakistan	+92 302 855 5367						
Human Rights Commission of Pakistan	Chairperson I.A. Rehman	Aiwan-I-Jamhoor, 107-Tipu Block New Garden Town, Lahore, Pakistan	+92 42 358 38341/358 64994/358 65969	www.hrcp-web.org					



Equal Ground- Sri Lanka	Ms Rosanna Flamer-Caldera, Executive Director	EQUAL GROUND, Colombo, Sri Lanka	+94 11 567 9766/ 280 6184	www.equal-ground.org
<b>Southeast Asia</b>				
Indonesian National Commission on Human Rights (KOMNAS HAM)	Ms Roichatul Aswidah, Commissioner for Sub-Commission of Research and Study; Mr Sastramanjani Kubitra, Head of Bureau for Advancing Human Rights	Jl. Lathuhary No.4B Menteng, Jakarta Pusat Indonesia	+62 21 392 5230	www.komnasham.go.id
Commission on Human Rights of the Philippines	Atty. Marc Titus D. Cebreros, Chief of Staff, Office of the Chairperson, Coordinator, NGO Civil Society and Media Cooperation Office	SAAC Building, Commonwealth Avenue UP Complex, Diliman, Quezon City, Philippines	+63 2 928 5655/926 6188	www.chr.gov.ph
Timor-Leste Office of the Provedor for Human Rights and Justice	Dr Sebastiao Dias Ximenes, Ombudsman or Provedor for Human Rights and Justice	Rua Kaikoli Dili Timor-Leste	+670 333 1030	http://pdhj.org/wp/go.id
Lembaga Bantuan Hukum Masyarakat	Ms Ajeng Larasati, Human Right, HIV, and Drug Policy Programm Coordinator	Jl. Tebet Timur Dalam III, No. 54A Jakarta Selatan 12820, Indonesia	+62 21 830 54 50	www.lbhmasarakat.org
Sanggar Warna Remaja (SWARA)	Ms Alexa Knowles	Jl. Pisangan Baru Timur III No.4 RT.002 RW.005, Kel. Pisangan Baru, Kec. Matraman, Jakarta Timur, Indonesia	+62 21 85914404	n/a
Gay, Transgender, and MSM Network - Indonesia (GWL-INA)	Mr. Pipiet Laksmono	Jl. Tebet Dalam 1 No. 33, Jakarta Selatan, Indonesia	+6221 - 83704682	n/a
Indonesian LGBT Forum	Yuli Rustinawati (Iye)	Arus Pelangi, Jl. Tebet Timur Dalam 6-G No. 1 Jakarta Selatan 12820, Indonesia	+6221 - 8280380	
Action for Health Initiatives – ACHIEVE	Ms Malu Marin, Ms Rak Ignacio	162-A Sct. Fuentebella Ext., Quezon City 1103, Philippines	+63 2 414 6130	www.achieve.org.ph
ISEAN-HIVOS Program	Mr Mohamad Shahrani bin Mohamad Tamrin, Regional Program Manager; Mr Rui Carvalho, Timor-Leste Program Manager	ISEAN-Hivos Global Fund Program, ISEAN Secretariat, Jl. Tebet Dalam 1, No. 33, Jakarta Selatan 12810 DKI Jakarta, Indonesia	+62 21 40838094	www.iseanhivos.org

## ANNEX 5. DETAILED PROJECT METHODOLOGY

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### Methodology

The Project was designed with the following core methodology:

#### A. *Desk review*

IDLO conducted a desk review of relevant NHRI annual reports, research, strategies and initiatives in the focus countries, and developed Background Brief reports to guide initial engagement with NHRIs and communities.

The Background Briefs are available at:

<http://asia-pacific.undp.org/practices/hivaid/Publications.htm>; and <http://www.idlo.int/english/WhatWeDo/Programs/Health/Pages/Publications.aspx>.

#### B. *Partner engagement*

The Asia Pacific Forum, IDLO and UNDP APRC introduced the Project to NHRIs, shared Project background and objectives, and invited NHRIs to participate in the Project.

IDLO and UNDP APRC introduced the Project to community partners, shared Project background and objectives, and invited the community to participate in the Project.

#### C. *National Stakeholder Consultation*

IDLO and UNDP country offices facilitated bilateral meetings and a stakeholder consultation in each country to initiate or strengthen dialogue between the community and the NHRI.

#### D. *Community survey*

IDLO supported community partners to conduct a survey to capture community awareness and perceptions of the NHRI in their country. The survey questionnaire was reviewed, revised and translated by local community organizations, as appropriate. The survey process was community led.

Survey findings document community understanding of NHRI roles and mechanisms.

#### E. *National Report*

IDLO provided technical support to NHRIs to document their response to SOGI-related rights issues (National Reports).

#### F. *National Partnership Dialogue*

IDLO and UNDP country offices worked with local NHRIs and community partners to conduct a National Partnership Dialogue in each country to facilitate sharing of the National Reports by NHRIs and sharing of survey findings by community partners.

#### G. *Regional Report*

IDLO analyzed National Reports and community survey findings to draft this Regional Report.

## ANNEX 6. NATIONAL STAKEHOLDER CONSULTATIONS, NATIONAL PARTNERSHIP DIALOGUES AND MEETINGS

Commission	Mission 1	Mission 2
Bangladesh	11 June 2012 – NHRC Briefing Meeting 12 June 2012 – Community Briefing Meeting 13 June 2012 – National Stakeholder Consultation	11 October 2012 – National Partnership Dialogue
India	25 June 2012 – NHRC Briefing Meeting 25 June 2012 - Community Briefing Meeting 26 June 2012 – National Stakeholder Consultation	15 March 2013 – NHRC Bilateral Meeting No National Partnership Dialogue
Nepal	17 May 2012 – NHRC Briefing Meeting 19 June 2012 – Community Briefing Meeting 28 June 2012 – National Stakeholder Consultation	5 October 2012 – National Partnership Dialogue
Sri Lanka	5 January 2013 – Community Briefing Meeting 7 January 2013 – NHRC Bilateral Meeting No National Stakeholder Consultation	12 March 2013 – Community Report Back Meeting 13 March 2013 – NHRC Bilateral Meeting No National Partnership Dialogue
Pakistan	6 June 2012 – HRCP Briefing Meeting 6 June 2012 – Community Briefing Meeting 7 June 2012 - National Stakeholder Consultation	15 November 2013 – National Partnership Dialogue
Indonesia	18 February 2013 – NHRC Briefing Meeting 18 February 2013 – Community Briefing Meeting 19 February 2013 – National Stakeholder Consultation	19 March 2013 – National Partnership Dialogue
Philippines	10 September 2013 – NHRC Briefing Meeting 10 September 2013 – Community Briefing Meeting 11 September 2013 – National Stakeholder Consultation	17 December 2012 – National Partnership Dialogue
Timor-Leste	27 March 2013 – NHRC and Community Dialogue (combined National Stakeholder Consultation and National Partnership Dialogue)	

## ANNEX 7. SUMMARY OF ENGAGEMENT WITH NHRIs

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### *South Asia*

In Bangladesh, IDLO communicated with the Chairperson of the NHRC Bangladesh, support staff and the UNDP National Human Rights Commission Capacity Development Project. The NHRC Bangladesh hosted the National Stakeholder Consultation in June 2012. UNAIDS facilitated the National Partnership Dialogue in October 2012, held at a larger venue to enable more participants to join. The National Report was prepared by a NHRC Bangladesh nominated consultant, in close cooperation with the NHRC Bangladesh. The National Report was endorsed by the Commission and presented at the National Partnership Dialogue in October 2012.

In India, IDLO communicated with a Deputy Secretary (senior staff) and from time to time, the Secretary General. The NHRC India hosted the National Stakeholder Consultation in June 2012. Following the National Stakeholder Consultation and internal processes, the NHRC India determined they would 'await the judgment of Supreme Court' on the appeal of the Delhi High Court judgment on S.377 of the Indian Penal Code (relating to criminalisation of sex between men). The National Report was prepared by an independent consultant and shared with the NHRC India.

In Nepal, IDLO communicated with the Secretary General of the NRHC Nepal and the Commission's LGBTI focal point. The NHRC Nepal hosted the National Stakeholder Consultation in June 2012. The National Report was prepared by the Commission's LGBTI focal point. The National Report was endorsed by the Commission and presented at the National Partnership Dialogue in October 2012.

In Sri Lanka, communication with the HRC Sri Lanka was facilitated by the UNDP Liaison Officer (situated within the office of the HRC Sri Lanka). The HRC Sri Lanka determined it could not actively participate in the NHRI SOGI Project due to an existing large workload and lack of capacity to take on another project. The HRC Sri Lanka welcomed informal briefing meetings with IDLO during missions in January and March 2013. While HRC Sri Lanka was unable to participate in meetings with the LGBTI community, they expressed that community members were welcome to approach the HRC Sri Lanka with their concerns. The National Report was prepared by an independent consultant and shared with the HRC Sri Lanka.

In Pakistan, IDLO communicated with the Chairperson of the HRCP and staff. The HRCP participated in the National Stakeholder Consultation in June 2012 and the National Partnership Dialogue in November 2012, but did not host either meeting due to logistical factors. The National Report was prepared by an independent consultant and shared with the HRCP.

### *Southeast Asia*

In Indonesia, the UNDP Country Office facilitated meetings and communication, assisting the Project with up to date information on the appointment of new Commissioners in late 2012. KOMNAS HAM hosted the National Stakeholder Consultation in February 2013 and the National Partnership Dialogue in March 2013. The National Report was prepared by KOMNAS HAM staff and presented at the National Partnership Dialogue.

In the Philippines, IDLO communicated with the CHR Philippines Chairperson, with support from UNDP Country Office. The CHR Philippines deputed a focal point for the Project with whom Project partners also had open lines of communication. The CHR Philippines hosted the National Stakeholder Consultation and the National Partnership Dialogue. The National Report was prepared by a CHR Philippines nominated consultant, in close cooperation with the CHR Philippines. The National Report was endorsed by the Commission and presented at the National Partnership Dialogue by the CHR Philippines focal point.

In Timor-Leste, the UNDP Country Office led communication and implementation of an adapted methodology. Based on the small size of the PDHJ, the Project was adapted to fit with existing practices. The National

Stakeholder Consultation and National Partnership Dialogue were implemented via the PDHJ's monthly human rights discussion meeting. The National Report was prepared by an independent consultant and shared with the PDHJ. The latter provided feedback on the report and these comments were incorporated.

## ANNEX 8. COMMUNITY SURVEY QUESTIONNAIRE

### Increasing Understanding of Community Perceptions of National Human Rights Commissions

Introduction: This survey is part of an eight country Asian regional project working with National Human Rights Commissions (NHRC) to analyze their capacity to address human rights issues related sexual orientation and gender identity (SOGI). In each country, the project has been adapted and refined to fit local context and culture.

This community survey will gather important information to increase understanding about community perspectives on access to justice, reporting human rights violations and NHRCs. The findings from this community survey will be presented a national dialogue in late 2012.

The project is being implemented by IDLO and UNDP in partnership with the Asia Pacific Forum, SAARCLAW, UNAIDS, community organisations and National Human Rights Commissions. The project builds upon key regional strategies and initiatives designed to promote SOGI-related rights: the Jogjakarta Principles 2006, the Report of the Asia Pacific Forum Advisory Council of Jurists on SOGI 2010, the Asia Pacific Regional Dialogue of the Commission on HIV and the Law 2011, SAARCLAW Roundtable on Legal and Policy Barriers to HIV 2011. Thank you for taking time to participate.

1. Name: (optional) \_\_\_\_\_
2. Area: \_\_\_\_\_
3. Email: (optional) \_\_\_\_\_
4. Sexual Orientation/Gender Identity (SOGI):
  - Gay Man or MSM       Lesbian       Third Gender (Transwoman)
  - Third Gender (Transman)       Hijra
5. Are you linked to/ part of a SOGI related network or community organization?
  - Yes     No     If yes, please specify \_\_\_\_\_
6. Have you experienced violations of your rights based on your sexual orientation, gender identity and / or your HIV status?
  - Yes     No     I am not sure
  - a) If you have experienced rights violations, have you reported them?
    - Yes     No
  - b) If yes, who did you report these rights violations to? (tick all applicable boxes)
    - Police     Lawyers       NGO or community based organization
    - Media     Self Government local bodies (Gram Panchayats)
    - District Government     Government legal aid clinics
    - State Government (including councils/ commissions)     National Human Rights Commission
    - Other    Please specify \_\_\_\_\_

7. Are you aware that your country has a National Human Rights Commission (HRC)?

Yes  No

a) If yes, how did you hear about the HRC? (tick all applicable boxes)

Through HRC information/advertising

Through Government information/ advertising

Through a community based organization/NGO

Newspaper  Internet  I do not recall

Other Please specify\_\_\_\_\_

8. What do you think is the role of the HRC? (tick all applicable boxes)

To protect and promote human rights

To investigate human rights violations

To research /write reports on the state of human rights in the country

To advise the government on human rights issues

To promote public awareness of human rights

To encourage NGOs working in the field of human rights

I do not know

Other Please specify\_\_\_\_\_

9. If a human rights violation occurred, did you or someone report it to the HRC?

Yes  No

a) If no, why not? (tick all applicable boxes)

The HRC is too far away/ inaccessible

There are limited ways to submit complaints (for example – the HRC does not accept email or phone complaints)

I did not know about the HRC

I do not know the process for using the HRC

I do not know if the HRC can help

Other

Please specify\_\_\_\_\_

b) If yes, what type of rights violation was it?\*

Please specify \_\_\_\_\_

c) If yes, did the HRC contact you to follow up complaint within three months?

Yes  No  I am not sure

d) If yes, did the HRC offer a solution or remedy for your complaint?

Yes  No  I am not sure

Further comments on this \_\_\_\_\_

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10. What do you think would encourage more people to report rights violations ('make a complaint') to the HRC? (tick all applicable boxes)

- Alternative ways of making complaints (eg. phone or email)
- Knowledge that the HRC accepts complaints in multiple languages
- Knowledge that the HRC is sensitive to diverse SOGI
- More information about the HRC
- More information about how to make a complaint to the HRC
- Knowledge that the HRC will advance SOGI-related rights issues with other state institutions
- Having a peer to support a person to make a complaint (someone who knows about the HRC)
- Other Please specify \_\_\_\_\_

11. How do you think the HRC can promote SOGI related rights?

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#### Interviewer's Notes

Question 6 / 6 (a) – examples of rights violations

Discriminatory treatment by healthcare personnel including:

- Denial of treatment
- Verbal insults
- Breach of confidentiality
- Lack of consent

Discriminatory treatment by employers including:

- Denial of employment
- Loss of employment if/when HIV status revealed
- Mandatory testing

Abuse and violence by law enforcement personnel including:

- Arbitrary detention
- Rape
- Extortion



- Sexual abuse
- Beating
- Verbal insults
- Refusal to attend to complaints on the basis of SOGI

Question 9 and 9 (a) (b) (c) (d)

If you/someone have not reported to the HRC – answer question 9 and 9 (a)

If you/some have reported to the HRC – please answer question 9, 9 (b) (c) (d)





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