



Leave no one behind

Advancing social, economic, cultural and political inclusion of LGBTI people in Asia and the Pacific

Summary



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Proposed citation:

UNDP (2015). *Leave no one behind: Advancing social, economic, cultural and political inclusion of LGBTI people in Asia and the Pacific - Summary*.

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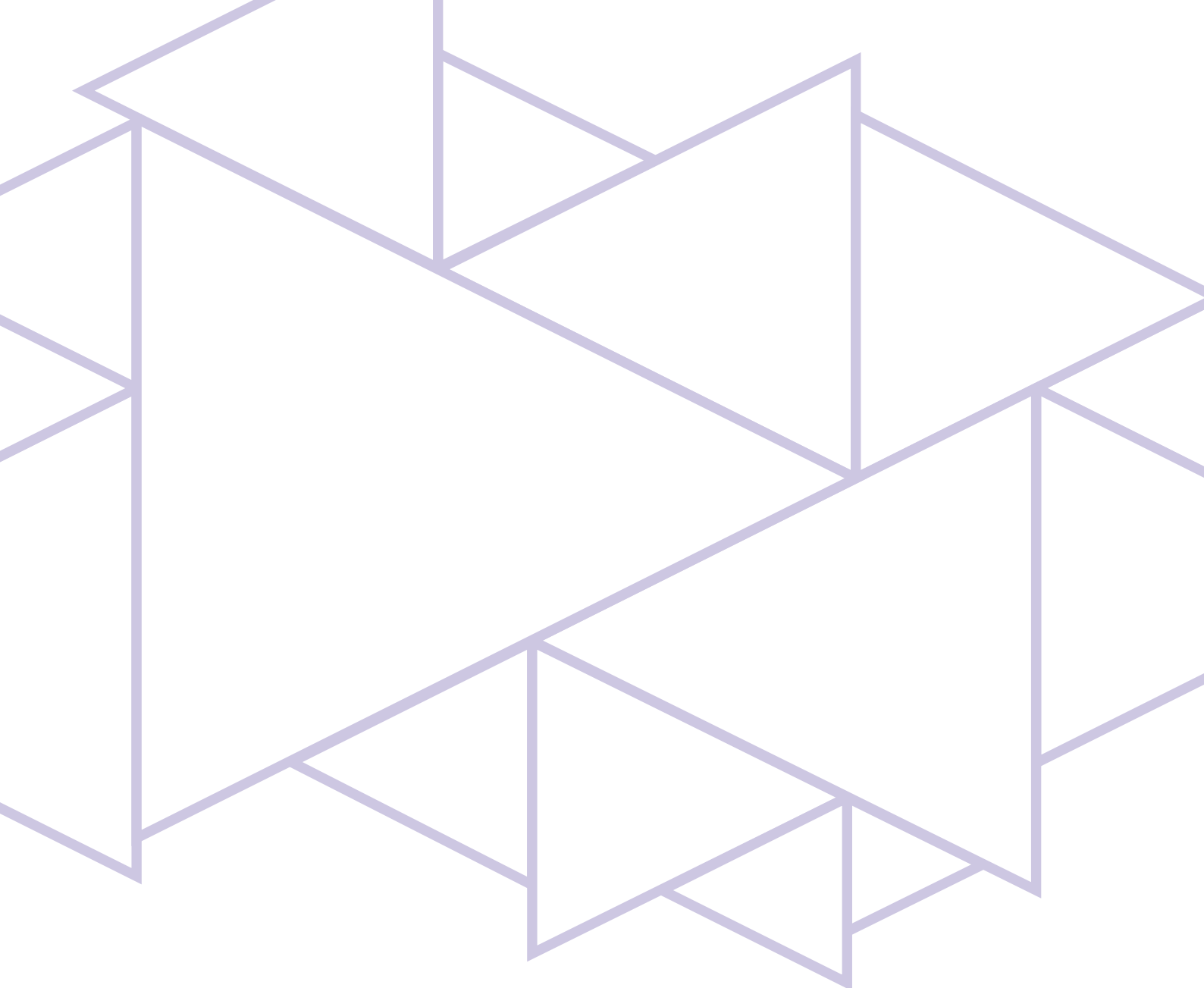
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Design: Inis Communication



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Contents

Acknowledgements	v
Acronyms	vi
Aims and objectives	1
Audience and partners.....	2
Geography and diversity	2
Sources	4
Summary.....	4
Terminology.....	11
Recommendations	12



Acknowledgements

The development of ***Leave no one behind: Advancing social, economic, cultural and political inclusion of LGBTI people in Asia and the Pacific*** benefited from an in-depth and consultative process with contributions from many individuals, government and human rights experts, community-based organizations and institutions. Many played a critical role by participating and providing personal stories during eight Being LGBTI in Asia national dialogues and the 'Regional Dialogue on LGBTI Human Rights and Health in Asia-Pacific' held from 25–27 February 2015. This report would not have been possible without these contributions.

This report was informed by the *Being LGBTI in Asia: Regional Overview Report on the National Consultations Phase 1* authored by Andy Quan; the *Analysis of Existing Evidence Related to SOGI issues and LGBTI Rights in Asia* authored by Emma Day; and the *Report of the Regional Dialogue on LGBTI Human Rights and Health in Asia-Pacific* authored by John Godwin.

Our thanks and special gratitude to John Godwin for his invaluable contributions as the author of this report. Edmund Settle, Policy Advisor, United Nations Development Programme (UNDP) Bangkok Regional Hub managed the development of the report. Thanks are also due to Andy Quan for his editing of the final draft of the report.

The contributions of the following government and human rights experts who reviewed drafts are gratefully acknowledged: Hon. Louisa Wall, Member of Parliament, New Zealand; Hon. Oyungerel Tsedevdamba, Member of Parliament, Mongolia; Professor Vitit Muntarbhorn, Professor of Law, Chulalongkorn University, Thailand; and, Nurul Malim, Deputy Secretary, Policy, Law and Complaints Group, SUHAKAM (Human Rights Commission of Malaysia).

The report benefited from excellent contributions from the following community experts: Shale Ahmed, Bangladesh; Ashok Row Kavi, Vivek Divan and Kajal Bharadwaj, India; Dédé Oetomo, Indonesia; Amanda Hill and Jack Byrne, New Zealand; Qasim Iqbal, Muhammad Osama and Dr Muhammad Moiz, Pakistan; and Ging Cristobal, Philippines.

The report profited greatly from the valuable advice and review from the following UN offices:

UNDP Bangkok Regional Hub: Nadia Rasheed, Ian Mungall, Nicholas Booth, Kazuyuki Uji, Katri Kivioja, Ernest Noronha, Jensen Byrne and Tivea Koam.

UNDP Country Offices: Andrea Pastorelli and James Yang, China; Lany Harijanti and Hendri Yulius Wijaya, Indonesia; James Chako, Malaysia; Bharat Man Shrestha, Nepal; Fe Cabral, Philippines; Suparnee Pongruengphant, Thailand; and Lieu Anh Vu, Viet Nam.

UNDP New York: Mandeep Dhaliwal, Clifton Cortez and Marko Karadzic.

United Nations Educational, Scientific and Cultural Organization (UNESCO): Justine Sass, Karen Humphries-Waa and Thanh Loa Ngo, Bangkok.

International Labour Organization (ILO): Richard Howard, Bangkok.

World Health Organization (WHO): Annette Digna Verster, Geneva.

Office of the High Commissioner for Human Rights (OHCHR): Michael van Gelderen, Geneva.

United States Agency for International Development (USAID): Thomas White, Bangkok; and Ajit Joshi and Vy Lam, Washington, DC.

The development of this report was supported by the Being LGBTI in Asia programme and the Multi-Country South Asia Global Fund HIV Programme (MSA-910-G02-H).

Acronyms

APCOM	Asia Pacific Coalition on Male Sexual Health
APTN	Asia Pacific Transgender Network
ASEAN	Association of Southeast Asian Nations
ASC	ASEAN SOGIE Caucus
BRH	Bangkok Regional Hub, UNDP
CBO	Community-based organization
CDC	Centre for Disease Control
CSO	Civil society organization
HIV	Human immunodeficiency virus
IGLHRC	International Gay and Lesbian Human Rights Commission
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
ILO	International Labour Organization
LGBTI	Lesbian, gay, bisexual, transgender and intersex
MSM	Men who have sex with men
NACO	National AIDS Control Organisation, India
NGO	Non-governmental organization
OHCHR	Office of the High Commissioner for Human Rights
PFLAG	Parents, Families and Friends of Lesbians and Gays
SDGs	Sustainable Development Goals
SIDA	Swedish International Development Cooperation Agency
SOGI	Sexual orientation and gender identity
SOGIE	Sexual orientation, gender identity and expression
SOGII	Sexual orientation, gender identity and intersex
SRS	Sex reassignment surgery
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPR	Universal Periodic Review
USAID	United States Agency for International Development
WHO	World Health Organization
WPATH	World Professional Association for Transgender Health

“The inclusion of lesbian, gay, bisexual, transgender and intersex people is core to the sustainable development agenda and for human rights for all.”

Helen Clark, UNDP Administrator, Address to the Regional Dialogue on LGBTI Human Rights and Health in Asia-Pacific, 2015

LGBTI people represent some of the most marginalized populations in Asia and the Pacific. Attention to the needs and human rights of LGBTI people is therefore essential if countries are to achieve the post-2015 Sustainable Development Goals (SDGs), a key feature of which is the underlying principle and commitment to ‘leave no one behind’.

Aims and objectives

The report, *‘Leave no one behind: Advancing social, economic, cultural and political inclusion of LGBTI people in Asia and the Pacific’*, aims to transform the state of lesbian, gay, bisexual, transgender and intersex (LGBTI) rights and inclusion in Asia and the Pacific. The report proposes an agenda for action in the context of the SDGs. It does this by drawing from the wealth of data generated by the literature reviews undertaken and the country and regional dialogues convened as part of the Being LGBTI in Asia initiative.

The Being LGBTI in Asia initiative is supported by the United Nations Development Programme (UNDP), the Embassy of Sweden in Bangkok and the United States Agency for International Development (USAID).

Being LGBTI in Asia

Being LGBTI in Asia¹ is a partnership between Asian LGBTI organizations, community leaders and development partners. Phase 1 of the initiative covered the period of 2012-2015 and was a partnership between UNDP and USAID. The objective of phase 1 was to conduct a participatory review and analysis of the legal and social environment for LGBTI persons in Asia. Being LGBTI in Asia works with a range of partners including the ASEAN Sexual Orientation, Gender Identity and Expression (SOGIE) Caucus, the Asia Pacific Transgender Network, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Asia-Pacific Forum on National Human Rights Institutions (APF). A Technical Advisory Group provides guidance to the initiative, comprising experts from academia, civil society, government and the private sector, including LGBTI people.

In phase 1, the partnership reviewed the rights of LGBTI people in 18 countries in East Asia and South-East Asia. Building on the review, national dialogues were held in Cambodia, China, Indonesia, Mongolia, Nepal, the Philippines, Thailand and Viet Nam. The dialogues examined LGBTI lived experiences from a development and rights perspective, and included perspectives from government representatives and LGBTI communities. As the project developed, the rights of intersex people were increasingly included within the scope of the work.

National reports were published that included recommendations based on inputs to the dialogues and additional research and analysis.² An Asia-wide literature review was also conducted and further data, resources and experiences were drawn from civil society organizations, academic institutions and private sector partners.

1 The initial name of the project was Being LGBT in Asia. As the project developed, it became more inclusive of intersex people. For consistency, this report refers to the project’s current name, Being LGBTI in Asia, throughout the report, even in reference to work in its earlier phases, except for the official titles of reports, such as the Being LGBT in Asia country reports.

2 Being LGBTI in Asia country reports can be found at <http://www.asia-pacific.undp.org/content/rbap/en/home/operations/projects/overview/being-lgbt-in-asia/>

UNDP also convened a Regional Dialogue on LGBTI Human Rights and Health in Asia-Pacific in February 2015 with support from the Embassy of Sweden in Bangkok, USAID and other partners. The Regional Dialogue gathered 225 participants from Asia and the Pacific.³ Participants included representatives and experts from community, government, National Human Rights Institutions (NHRIs) and development partners. Inclusion of intersex people in the Regional Dialogue enabled discussion of specific issues relating to intersex status. A regional meeting of NHRIs was convened by UNDP, APF, Asia Pacific Coalition on Male Sexual Health (APCOM) and Being LGBTI in Asia to coincide with the Regional Dialogue.

Phase 2 of Being LGBTI in Asia commenced in February 2015 and is aimed at advancing well-being and reducing inequality and marginalization of LGBTI people. This collaborative initiative works with civil society, governments and national and regional institutions to advance protective laws and policies. It also seeks to strengthen and empower regional civil society advocacy groups, and community-based organizations, with a focus on China, Indonesia, the Philippines and Thailand.

Audience and partners

The primary audience of this report is governments, policy-makers, national human rights institutions, human rights defenders, and community groups. The information and data in the report can also be used to provide substantive linkages between LGBTI inclusion efforts and broader development and human rights agendas of bilateral and multilateral donors, development partners and the UN system.

Geography and diversity

The Asia-Pacific region is one of vast sociocultural, religious and linguistic diversity that covers a vast geographical area and a large number of countries. The report includes information and experiences of communities from throughout Asia and the Pacific, although less research and data are available from some Asian countries and from the Pacific Islands.

Concepts of sexual orientation and gender identity vary greatly across the region. There is a long history of culturally specific indigenous gender identities in Asia and the Pacific. In Asia, examples of these identities include *waria* in Indonesia, *metis* in Nepal and *kathoeys* in Thailand. Many of these communities have a history of recognition by local cultures, and experience varying degrees of acceptance by contemporary society.

There are also hundreds of local terms used to describe sexual orientation and gender identity and expression (SOGIE) subcultures in contemporary societies across the region. Terms typically have meanings that combine aspects of both sexual orientation and gender identity or gender expression. Sometimes these terms are considered derogatory, depending on the context, and are used to varying degrees within communities.

Alongside local identities, there are communities concentrated mainly in urban areas whose identities correspond more closely with Western subcultures of lesbians, gay men, bisexuals, and transgender people.

³ Countries represented at the Regional Dialogue from outside Asia included Australia, Fiji, Papua New Guinea, New Zealand and Tonga.

Examples of indigenous gender identities in Asia and the Pacific

- *Hijras* (India and Bangladesh), *thirunangais* (Tamil Nadu) and *khwaja siras* (Pakistan) have been a part of South Asian cultures for centuries and have recently been recognized by law as a third gender.
- The Bugis people of Sulawesi, Indonesia, recognize five gender categories: male, female, *calalai* – female-born individuals who identify as neither woman nor man; *calabai* – male-born individuals who also identify as neither man nor woman; and *bissu* – shamans who embody female and male elements.⁴
- Pacific Island countries also have unique communities including people assigned a male sex at birth who identify as having a gender identity or expression that is either female or who exhibit both feminine and masculine traits. These include the *akava'ine* in the Cook Islands, *vakasalewalewa* in Fiji, *fa'afafine* in Samoa, *fakaleiti/leiti* in Tonga, *pinapinaaine* in Tuvalu, and *mahu* in French Polynesia. Males who identify with these groups often assume female roles in the family, and are usually broadly accepted as part of society,⁵ although some may experience stigma. Indigenous populations in Australia and New Zealand also have culturally specific gender identities, including *whakawahine* in New Zealand, 'sistagirls' in Australia and *yimpininni* in Tiwi Islands (Australia).

Examples of local terms used to describe sexual orientation, gender identity and expression

- In Cambodia, there is a distinction between male 'short hairs' (*sak klay*), male 'long hairs' (*srei sros*) and 'real men' (*boroh pith brakat*). 'Short hairs' are usually married, but also engage in sex with men. 'Long hairs' are males who identify and act as women and generally only want to have sex with 'real men'.⁶ Others are described as being 'short hair' by day and 'long hair' by night, illustrating the fluidity of gender identities and expressions.⁷
- In South Asia, there is a distinction between *kothis* (or their local equivalent) who are males who feminize their behaviours and who prefer to be sexually penetrated by men, and *panthis* (or their local equivalent), which is a term given by *kothis* to males who sexually penetrate them. Most *panthis* and many *kothis* are married to women.⁸
- In Indonesia, a masculine woman who has sex with other women is sometimes referred to as a 'tomboy', while feminine women who have sex with women may be referred to as 'cewek'.⁹
- In Thailand, a 'tom' is a female who dresses and acts in a masculine fashion and may also have sex with feminine women ('dees'). A 'dee' is a female who follows prevailing female gender norms of mainstream society, refers to herself as a woman, and who has sex with toms.¹⁰

4 Davies, S. (2010). *Gender Diversity in Indonesia: Sexuality, Islam, and Queer Selves*. London & New York: Routledge.

5 Farran, S. (2010). Pacific Perspectives: Fa'afafine and Fakaleiti in Samoa and Tonga: People Between Worlds. *Liverpool Law Review*. 31 (1), 13–28; Perkins R. (1994). *Like a lady*. *Polare*. 3: March 1994. Sydney: Gender Centre.

6 Cambodian Center for Human Rights (2010). *Coming out in the Kingdom: Lesbian, Gay, Bisexual and Transgender People in Cambodia*. Phnom Penh: Cambodian Center for Human Rights.

7 *Being LGBT in Asia: Cambodia Country Report*, p. 19.

8 Naz Foundation International (1999). Briefing Paper 3, *Developing community-based sexual health services for males who have sex with males in South Asia*.

9 See: Boellstorff, T. (2005). *The Gay Archipelago: Sexuality and Nation in Indonesia*. Princeton and Oxford: Princeton University Press, p. 162ff.

10 See: Sinott, M. (2004). *Toms and Dees: Transgender Identity and Female Same-Sex Relationships in Thailand*, Honolulu: University of Hawai'i Press.

Sources

This report summarizes data generated through the Being LGBTI in Asia initiative. This includes country dialogues convened in eight countries, the regional LGBTI dialogue, the regional meeting of NHRIs, and their corresponding reports. Other major research included a broad analysis of existing evidence related to SOGIE issues and LGBTI rights in Asia and a regional analysis of all of the country reports.

Through these various activities, Being LGBTI in Asia established an evidence base on LGBTI issues in Asia and the Pacific, drawn from academic and epidemiological reports; reports from media, NGOs and multilateral organizations; and most importantly from LGBTI individuals and communities from within the region and beyond.

This publication specifically draws on the following reports that were produced with project partners:

- Being LGBTI in Asia country reports for Cambodia, China, Indonesia, Mongolia, Nepal, the Philippines, Thailand and Viet Nam, and the *Being LGBTI in Asia: Regional Overview Report on the National Consultations Phase 1*
- *Analysis of Existing Evidence Related to SOGI issues and LGBTI Rights in Asia*
- *Report of the Regional Dialogue on LGBTI Human Rights and Health in Asia-Pacific*
- *Report of the Workshop on the Role of NHRIs in Promoting and Protecting the Rights, including Health, of LGBTI People in Asia and the Pacific*
- *Meeting Report: Asia-Pacific Consultation on School Bullying Based on Sexual Orientation and Gender Identity/Expression, 15–17 June 2015, Bangkok, Thailand*
- *Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities in Asia and the Pacific.*

Summary

The movement for greater social acceptance of LGBTI people is entering a historically significant phase in Asia and the Pacific. The evidence generated by Being LGBTI in Asia identified numerous examples of improvements in the social and legal status of LGBTI people across the region, despite highly challenging social and political contexts. This report illustrates the range of measures taken to advance the greater social, economic and political inclusion of LGBTI people and highlights developments in the key areas of violence protection, education, health, employment, family affairs and political participation, as well as obstacles to further progress. The report describes how in some cases the judiciary has provided leadership when governments have failed to act. It cites positive examples in areas such as discrimination protections, social protection programmes, legal recognition of a non-binary or third gender, and constitutional protections of human rights.

The report highlights progressive social and political forces, including the increasing role of LGBTI groups in advocacy, that are propelling progress towards more widespread acceptance of LGBTI people and recognition of their needs and rights. It explores the factors that are contributing to advances in some countries in areas such as legal recognition and social protection. The report also describes the factors that contribute to the neglect of LGBTI people's needs and rights. It describes the social drivers of oppression and social exclusion including patriarchal traditions, conservative interpretations of religion and lack of democratic governance.

The main outcome of the report is an agenda for action within the context of the SDG agenda. In 2015, governments agreed an ambitious new sustainable development agenda to succeed the Millennium Development Goals of 2000–2015. The SDG agenda aims to combat inequalities and to create conditions

for sustainable and inclusive economic growth and shared prosperity. It envisages a more just, equitable and tolerant world in which dignity is promoted for all people – a world of social wellbeing, universal access to education, healthy lives for all people and equal opportunity, permitting the full realization of human potential. Underpinning the SDGs are principles of the rule of law, good governance, just and inclusive societies, and commitment to the principles of the *Universal Declaration of Human Rights* and the other key international human rights instruments.

The commitment to ‘leave no one behind’ is a key feature of the post-2015 sustainable development agenda. Conservatively estimated, there are at least 100 million LGBTI people living in Asia and the Pacific. Their issues must not continue to be marginalized. Ignorance, intolerance and hatred based on homophobic and transphobic prejudices result in social exclusion and fuel violations of rights, including intolerable levels of violence. It is essential that actions be taken to ensure LGBTI people can fully and securely participate in and benefit from the post-2015 development agenda.

A summary of the report, ‘*Leave no one behind: Advancing social, economic, cultural and political inclusion of LGBTI people in Asia and the Pacific*’, is as follows:

Chapter 1 of this report includes the Executive Summary with aims and objectives, audience and partners, geography and diversity, sources and a summary of the report’s chapters, as well as terminology used and a condensed version of the report’s more comprehensive set of recommendations found in Chapter 5.

Chapter 2 provides an overview of regional trends and developments relevant to the greater social, economic, political and cultural inclusion of LGBTI people and recognition of their human rights in Asia and the Pacific. A series of significant developments have occurred over the last decade though not every country in Asia and the Pacific has seen progress and in some cases, there have been significant setbacks. Where progress has occurred, the pace of change has been unpredictable and erratic. Nonetheless, the overall trend is towards a more accepting and supportive social and political context for LGBTI people in much of Asia and the Pacific.

Key progress has been identified that can be described in three areas. Firstly, the response to HIV has been used as an entry point to advocacy for LGBTI rights. It has led to policies, statements and resolutions that address SOGIE, and the mobilization of men who have sex with men (MSM) and transgender women has built advocacy skills, networks of influence and social capital within these communities. It has also increased visibility of MSM and transgender women, led to partnerships between communities and government, and brought greater attention to the legal and human rights contexts.

Secondly, LGBTI visibility is increasing in general in Asia and the Pacific with community mobilization, and pride marches and festivals, assisted by the growth of social media. LGBTI people are more visible in politics, media and the private sector. All this contributes to a more supportive environment for LGBTI people across the region.

Arguably the most important of the positive developments is a series of landmark developments in law and policy reform that are creating more positive social environments for LGBTI people. These include the decriminalization of homosexual conduct, and the enactment of legal protections from discrimination relating to sexual orientation and gender identity or gender expression in some countries. The past five years have seen a wave of progressive judicial decisions on the rights of transgender people from Hong Kong SAR, India, Malaysia, Nepal and Pakistan. In recent years, LGBTI issues have also been considered for the first time by many government agencies and national parliaments. In another positive legal development, NHRIs of Asia and the Pacific have recognized that their responsibilities extend to protection and promotion of SOGIE-related human rights.

Taken together, these wide-ranging developments in law reform, judicial leadership, and action by governments and NHRIs represent remarkable progress when compared to the situation at the beginning of this century. However, the pace of social change across the region is patchy, and where positive is typically gradual and should not be overstated.

Selected milestones towards LGBTI inclusion in Asia and the Pacific

East Asia

- China repeals Hooliganism Law, effectively decriminalizing male homosexual conduct, 1997.
- Taiwan (Province of China) enacts laws against discrimination based on sexual orientation in employment (2002) and education (2004), and debates proposals for marriage equality for same-sex couples (2014).
- Hong Kong SAR court recognizes the rights of gay men to equality before the law and non-discrimination on grounds of sexual orientation, 2005.
- Chapter on LGBT rights included in the Mongolia Human Rights Commission annual report on human rights and freedoms, 2013.
- LGBTI Business Summit held in Shanghai, China, 2014, and LGBT Inclusion Index recognizes corporate good practice in Hong Kong SAR, 2015.

South East Asia

- Anti-discrimination ordinances introduced in the Philippines that address SOGIE in two provinces, nine cities, one municipality, and three barangays (within Quezon City), 2003–2015.
- Viet Nam's first LGBT Pride parade held in Hanoi, 2012.
- Gender expression included in Thailand's *Gender Equality Act* 2015 and proposals for SOGIE to be included in Thailand's new draft constitution, 2015.
- Malaysian court finds criminalization of cross-dressing to be unconstitutional, 2015.
- Pink Dot grows rapidly to become a key public demonstration of family and community support to Singapore's LGBT community, 2009–2015.

South Asia

- Landmark ruling of Delhi High Court decriminalizes consensual sex between men in India, 2009; subsequently overturned by Supreme Court of India in 2013.
- Advances in rights of transgender people including recognition of 'third gender' as a result of court rulings in Nepal (2007), Pakistan (2009–2012), India (2014), and cabinet decision in Bangladesh (2013).
- Sri Lanka interprets constitutional rights to include protection from discrimination on the basis of sexual orientation and gender identity, 2014.
- Nepal includes LGBTI protections in new constitution, 2015.
- States of West Bengal, Chhattisgarh and Maharashtra (India) establish Welfare Boards for Transgender and *Hijra*, 2015.

Pacific

- Fiji court finds sodomy offence unconstitutional, 2005.
- Anti-discrimination provisions relating to sexual orientation in employment introduced in Cook Islands (2012) and Samoa (2013).
- SOGIE anti-discrimination clause included in Fiji Constitution, 2012.
- Marriage equality for same-sex couples introduced in six Pacific island territories, 2012–2015.
- Palau decriminalizes homosexual conduct, 2014.

Australia and New Zealand

- Decriminalization of homosexual conduct and introduction of discrimination protections for LGBT people in Australia and New Zealand, 1985–2000.
- New Zealand Human Rights Commission issues *To be who I am* landmark report on the rights of transgender people, with separate recognition of intersex issues, 2008.
- Australian discrimination protections extended to intersex people, 2013.
- Marriage equality, irrespective of a person's sex, gender identity or sexual orientation, achieved in New Zealand, 2013.

At the same time, there are challenges to greater social, economic, cultural and political inclusion of LGBTI people and recognition of their rights. Chief among them are the hostile social, legal and policy environments that persist in many Asia-Pacific countries. For a variety of reasons, including those linked to factors such as conflict, religious extremism, weak governance and economic underdevelopment, some countries have not benefited from the progressive social and political developments summarized above. There has been no notable progress in recognition of the human rights of LGBTI people in a number of countries in the region, and in some, oppressive legal and political environments are contributing to an erosion of the human rights of LGBTI people. Traditional social values and religious beliefs can sometimes create barriers to LGBTI inclusion, and cultural taboos can restrict the open discussion of sexuality in many societies. Resurgence of religious orthodoxy in some countries has been associated with a rise in violence and intolerance of LGBTI communities, including religious laws that create punitive offences affecting LGBT people. In a few countries, LGBTI communities are demonized for political reasons.

Another challenge is that certain LGBTI communities are neglected or invisible. While HIV brought attention to gay men, MSM and transgender women, the health needs and human rights of lesbians, transgender men and bisexual people, including young LGBT people, have received little attention and intersex issues are almost completely absent, with both misunderstandings of what are intersex issues and a lack of organized advocacy for the rights of intersex people.

A final challenge noted is that intersecting factors influence social exclusion across the region and compound each other, pointing to the need for holistic solutions that comprehensively address all factors that contribute to marginalization. For example, if an LGBTI person has a disability, has HIV, is poor, a migrant worker, a sex worker, a young person or an old person, or is a member of a cultural, ethnic or indigenous community, their vulnerabilities are heightened.

International human rights standards

At the international level, there has been growing recognition of human rights relating to sexual orientation, gender identity, gender expression and intersex status.

The *Yogyakarta Principles* is a key consensus statement of experts on the application of international human rights law in relation to sexual orientation and gender identity (2006).¹¹ The Principles emphasize that all people are entitled to the protection of human rights. The Principles have been relied on in several key court decisions including in India¹² and Nepal.¹³ Specific obligations include:

- To protect people from violence
- To decriminalize homosexuality
- To protect people from discrimination
- To protect freedom of expression, association and assembly and to take part in public affairs
- To recognize people's self-defined gender identity, with no exclusions including based on marriage or parenthood, and without forcing anyone to undergo medical procedures as a requirement for legal recognition of their gender identity.

There is also increasing international recognition of the need to respect and protect the human rights of intersex people, including by prohibiting medically unnecessary procedures on intersex children.

¹¹ The *Yogyakarta Principles* were developed at a 2006 meeting involving 29 international human rights experts.

¹² *National Legal Services Authority v. Union of India and Ors*, (2014) 5 SCC 438.

¹³ *Sunil Babu Pant v Nepal Government*, Writ No 917 of 2007.

Chapter 3 provides detailed information on progress and challenges in key areas of relevance to the SDGs (violence, decriminalization, legal recognition, discrimination, health, education, employment, family affairs, media and political participation). Examples are provided of laws, policies and practices that protect and fulfil the human rights of LGBTI people in these key areas and thereby support achievement of the SDGs. The report illustrates developments by reference to diverse country experiences, including information from the Being LGBTI in Asia country and regional dialogues.

Laws and policies

Violence towards LGBTI people is a key issue, as recognized, for example, by the unprecedented joint statement by 12 UN entities in September 2015 calling for an end to violence and discrimination against LGBTI people. The Being LGBTI in Asia dialogues confirmed the shocking nature and incidence of violence against LGBTI people across the region. Yet existing legal protections as applied to LGBTI people are limited. Hate crime laws may be useful but have not been adopted in many countries.

"In the Pacific, a more robust human rights-based approach to HIV and sexual and reproductive health and rights is urgently required. This includes the need for anti-discrimination legislation, the decriminalization of homosexuality and sex work, which continue to be criminal offences in most countries... In the 21st century, countries must adopt legislation that recognizes sexual orientation and gender identity."

Ratu Epeli Nailatikau, President of Fiji, Address to the United Nations Economic and Social Commission for Asia and the Pacific Intergovernmental Meeting on HIV and AIDS, 2015

Criminalization of LGBT people legitimizes prejudice in society at large, contributes to mental health problems common among LGBT people, and exposes people to hate crimes, police abuse, torture and family violence. Yet consensual homosexual sexual conduct between adult males is criminalized in at least 19 countries in Asia and the Pacific. Some countries criminalize consensual homosexual conduct under Islamic *sharia* law. Lesbian sexual conduct is also criminalized in some countries. Laws also criminalize cross-dressing, although there have been successful cases of overturning these laws.

Asia-Pacific countries that criminalize adult male homosexual sexual conduct	
Asia	Pacific Islands
Afghanistan, Bangladesh, Bhutan, Brunei, India, Malaysia, Maldives, Myanmar, Singapore, Pakistan, Sri Lanka	Cook Islands, Nauru, Papua New Guinea, Samoa, Tonga, Kiribati, Solomon Islands, Tuvalu

Legal recognition of transgender people is crucial for achieving a number of SDGs such as gender equality and ensuring healthy lives. But the vast majority of transgender people in Asia and the Pacific cannot obtain identity documents that give them recognition before the law, and thus legal protection. There is an international trend towards legal recognition of gender identity, through introduction of procedures to enable transgender people to register a change in sex or gender details to match their gender identity. But the area is complex and success in Asia and the Pacific has been mixed. In Bangladesh, India, Nepal and Pakistan, there is legal recognition of a third gender.

"Transgender people experience some of the highest levels of hostility, violence and discrimination. This is because others regard the demand of transgender people to be themselves, and to act in ways that appear normal and rational to themselves, as challenging to the heteronormative binary division of humanity into male and female categories... The opponents and critics of transgender people regard this binary division of humanity as immutable – ordained by God or nature and thus not to be denied or challenged by individual conduct, advocacy or law. At its worst, these attitudes deny any legal recognition to transgender identity... Whilst this may be comfortable for a majority of society, it has been burdensome and discriminatory towards transgender people."¹⁴

The Honourable Michael Kirby, former Justice of the High Court of Australia

Intersex variations are generally not well understood by policy makers, and are often conflated with transgender identities. Largely due to ignorance of the nature and extent of intersex variations, few countries in Asia and the Pacific have attempted to develop laws and policies to recognize and protect the rights of intersex people.

The legal recognition of same-sex partnerships also receives attention in Asia and the Pacific, with ongoing discussion, debate and government proposals. Marriage equality is only allowed in some Pacific Islands that are territories of France, the United Kingdom and the United States. The marriage rights of transgender people are also an issue.

Protection from discrimination includes both constitutional and legislative protections. Anti-discrimination laws can provide practical protections from unfair treatment and support to social inclusion. Relatively few countries offer comprehensive protection, though some individual laws or acts can cover sexual orientation and/or gender expression, as do measures at sub-national levels such as cities and municipalities.

Health, education, employment, family, media and political participation

The Being LGBTI in Asia dialogues emphasized the need to understand the health needs of LGBTI people according to each distinct population, and that particular attention should be given to the neglected health needs of lesbians, transgender men and intersex people. Key health issues in the region include banning conversion therapy, ensuring health care services that are non-discriminatory, addressing mental health issues, and recognizing and addressing the health rights of transgender and intersex people. While HIV and sexual health is a dominant issue for MSM and transgender women, lesbian and bisexual women's health tends to be neglected.

Ensuring that LGBTI people have access to inclusive and equitable quality education requires attention to bullying and other mistreatment within the school system. Extensive harassment was described in written reports and at the national and regional Being LGBTI in Asia dialogues. School uniforms are a particular issue for transgender people. Inclusive curricula and teacher training would be beneficial but is found in few locations, though awareness of SOGIE issues is being raised in colleges and universities throughout the Asia-Pacific region.

Employment discrimination includes being rejected for positions or denied promotions, harassment including sexual harassment, dismissal or being forced to leave jobs, and denial of partner benefits available to heterosexual couples. HIV-related stigma is a contributing factor to workplace discrimination particularly for gay men, MSM and transgender women. Transgender people can have fewer employment options and be pressured to conform to gender norms to keep their jobs. Legal protections against workplace discrimination on the grounds of sexual orientation exist in some countries, though fewer address gender identity and/or expression. Some leadership is being shown in the private sector by large companies operating in Asia and the Pacific who have progressive LGBTI policies or initiatives.

¹⁴ Kirby M. (2015). *Transgender persons, legal disharmony and attitudinal change* (paper), pp. 12–13.

Family life plays a central role in Asian and Pacific island cultures, and the Being LGBTI in Asia dialogues placed considerable focus on describing family dynamics in each country, and how LGBTI individuals are treated within the family. Traditional patriarchal family structures are often at odds with LGBTI identities. Some societies were reported as generally tolerant of male homosexual behaviour, so long as it is secret and men still marry and have children. The positive roles of NGOs like PFLAG were noted for encouraging family acceptance of LGBTI members but accurate information for families and positive role models is still needed.

The media has tremendous influence on public perceptions of LGBTI people as well as the political context. While standards are gradually improving, media reporting is still typically more negative than positive in its portrayal of LGBTI people across Asia and the Pacific. Censorship of positive LGBTI content was noted as an issue, though several positive media initiatives were highlighted. Many countries have their own LGBTI media, and this is increasing with social media and the internet used as a substitute for traditional print media.

The final area addressed in this review of progress and challenges in key areas related to the SDGs is that of political participation. The challenge to being involved in mainstream politics for LGBTI people is clear, and yet political parties representing LGBT populations have been established in the Philippines and Thailand. There has also been visible LGBTI political participation in Australia, Hong Kong SAR, India, Indonesia, Japan, Nepal and New Zealand.

Chapter 4 summarizes progress in LGBTI organizing in Asia and the Pacific, and discusses the challenges faced by LGBTI organizations in different social and political contexts. One of the most important factors in LGBTI lives is the strength of their communities. Investing in LGBTI organizations financially and recognizing their work publicly is important for strengthening communities. It allows for empowerment of LGBTI people to engage in effective advocacy to change laws and policies, to respond to and defend against human rights violations (including through mounting public interest litigation) and to influence public attitudes.

This chapter describes constraints on LGBTI organizing where LGBTI sub-populations may find it hard to organize or have a voice because of factors such as location (rural rather than urban), and conservative politics or religion. Constraints on civil society in general, such as difficulties for NGOs to register, can affect LGBTI groups. Divisions within LGBTI movements include different priorities and strategies, and competition for funds. LGBTI groups can also face harassment or attacks from police and religious groups, though sometimes turn challenges into advocacy success.

The great diversity in strength and capacity between and within countries and between LGBTI organizations is noted, as well as the use of the internet and smart phones for networking and community mobilization. A snapshot of LGBTI organizing in Asia and the Pacific is provided, as well as regional organizing. The chapter notes that opportunities at national and regional levels for sharing of lessons and experiences, and the development of strategic alliances among LGBTI organizations and with other allies in civil society, are increasingly important in the context of LGBTI organizing being generally more positive now than ever.

Chapter 5 provides conclusions and a comprehensive set of recommendations for LGBTI inclusion. They are aimed at governments, donors and multilateral organizations, national human rights institutions, the private sector and LGBTI organizations – and are placed within the context of the post-2015 Sustainable Development Goals which provide the development agenda and framework over the next 15 years, underpinned by principles of just and inclusive societies, and human rights. Most of the recommendations are directed at governments, which have primary responsibility for delivering on the SDGs and which have the power to change the laws and policies that directly impact on LGBTI people's lives.

The recommendations are organized with reference to the SDGs to guide countries on how to address LGBTI people's issues in their national planning, with specific reference to the following SDGs: ending poverty (SDG 1), ensuring healthy lives (SDG 3), inclusive and equitable education (SDG 4), achieving gender equality (SDG 5), decent work for all (SDG 8), reducing inequalities (SDG 10), making settlements safe, resilient and sustainable (SDG 11) and promoting peaceful and inclusive societies, access to justice and accountable and inclusive institutions (SDG 16).

Terminology

The terminology used around gender identity, gender expression and sexual orientation is complex, and sometimes contested as terminology can have deep effects on both individuals and communities. The definitions below are a guide to how these expressions are used and referred to in this report, although they are not definitive and may change with time.

LGBT, LGBTI: Lesbian, gay, bisexual, transgender and intersex. The terms 'LGBT' and 'LGBTI' are increasingly used by community-based advocacy organizations in Asia and the Pacific. While these sexual orientations and gender identities should not necessarily be grouped together at all times, it can be helpful to group issues affecting LGBTI populations together for the purposes of advocacy and solidarity, while acknowledging that there are significant differences between the issues and priorities of each of these populations.

Policy makers sometimes prefer other umbrella terms such as 'gender and sexual minorities', 'SOGIE minorities' or 'SOGIE-diverse communities'. However, for consistency, this report uses the terms 'LGBT people' or 'LGBTI people'. The term 'LGBT' is used in this report where the context does not include intersex people. Because awareness of intersex issues and people has been relatively low until recently, and remains low, it is not always accurate to use the term 'LGBTI'. For example, if LGBT advocacy in a country does not yet include intersex issues, it would be inaccurate to add the 'I' to describe it.

This report also wishes to note recognition that concepts of sexual orientation and gender identity vary greatly across the region, with a long history of culturally specific indigenous gender identities in Asia and the Pacific. There are hundreds of local terms used to describe SOGIE subcultures in contemporary societies across the region. Terms typically have meanings that combine aspects of both sexual orientation and gender identity or gender expression. Alongside local identities, there are communities concentrated mainly in urban areas whose identities correspond more closely with Western subcultures of lesbians, gay men, bisexuals, and transgender people.

However, in this report, the term 'LGBTI people' is intended to be inclusive of all gender and sexual minorities in Asia and the Pacific, regardless of whether they identify as lesbian, gay, bisexual, transgender, intersex or as another culturally specific identity.

SOGI (sexual orientation and gender identity), **SOIGIE** (sexual orientation, gender identity and expression) and **SOIGII** (sexual orientation, gender identity and intersex): The usage of these terms varies across the region. For consistency, this report uses the acronym SOGIE. In Australia and New Zealand, the term SOGII is frequently used, as it is inclusive of intersex. While the use of 'LGBTI' has a stronger emphasis on communities and individuals, these terms refer more strongly to the broader concepts of how individuals identify themselves or are attracted to others.

Gender identity: A person's gender identity is a deeply felt sense of being male, female, transgender, or another non-binary gender identity. A person's gender identity may correspond to, or be different from, the person's male or female biological sex. There are many gender identities, including those that describe a third gender, being both male and female, or identifying as gender non-conforming or gender variant. There are a wide range of gender identities and communities based on gender identities across Asia and the Pacific.

Gender expression: Gender expression refers to a person's expression of their masculinity, femininity or other gender characteristics, for example through their behaviour, clothing, jewellery and hairstyle. Every person has their own sense of how they express their masculinity and/or femininity externally. People are particularly vulnerable to discrimination when their gender expression is different from their biological sex, or when it combines elements of both masculine and feminine gender expression.

Transgender: The term 'transgender' is used to refer to all people whose internal sense of their gender (their gender identity) is different from the sex they were assigned at birth. Someone assigned a female biological sex at birth who identifies as male is referred to as a transgender man. He might also use the pronoun 'male' to describe his identity. A transgender woman is someone assigned as male at birth

according to biological sex who identifies as female. She might use the pronoun 'female' to describe her identity. In this report, 'third gender' people are considered to fall within the umbrella term 'transgender'.

Third gender: The term 'third gender' is used in some countries to refer to people who identify as neither male nor female. In some countries, people who identify as neither male nor female have a legal right to documentation confirming their identity as belonging to a third gender or a non-binary category. In South Asia, people who may register as third gender include *hijras* in Bangladesh, *khawaja siras* in Pakistan, *metis* in Nepal, and *hijras* and *thirunangai* in India.

Transsexual: The term 'transsexual' is sometimes used to describe transgender people who have undergone or want to undergo medical procedures related to a transition from one biological sex to another, such as gender affirming surgeries.

Gender affirming surgeries: This is a term used to describe genital reconstruction surgeries and associated medical procedures. The alternative term '**sex reassignment surgery**' or '**SRS**' is often used. However, this is problematic because it creates the impression that genital reconstruction is just one rather than multiple surgeries. Transgender people around the world are increasingly using the terms 'gender affirming' surgeries and 'gender affirming' health services.

Intersex: 'Intersex' is an umbrella term used to describe a wide range of natural bodily variations. An intersex person is a person born with atypical sex characteristics, such as sexual anatomy, reproductive organs and/or chromosome patterns that do not fit the typical definition of a biological male or female. Intersex describes a person's biological sex characteristics, rather than their gender identity or gender expression. These biological characteristics may be apparent at birth or emerge later in life, often at puberty. There are many different intersex conditions. Many intersex infants are subjected to procedures, including genital surgery, to adapt their bodies to culturally dominant definitions of maleness and femaleness. Typically, intersex people do not want to be defined by a medical condition or term such as intersex, and most identify to be either female or male. An intersex person may identify as female, male, both or neither.

Sexual orientation: 'Sexual orientation' refers to a person's capacity for profound emotional, physical and/or romantic attraction towards other people. Same-sex sexual and romantic attractions, feelings and behaviours are normal and positive variations of human sexuality. Attractions, feelings and behaviours may be oriented towards people of the same biological gender or gender identity, a different biological gender or gender identity, or to variations including towards both same and different genders and expressions.

Biphobia, homophobia and transphobia: These terms indicate a dislike, hatred or fear of or prejudice against bisexual people (biphobia), homosexual people (homophobia) and transgender people (transphobia).

Recommendations

The following recommendations on LGBTI inclusion and the post-2015 development agenda are specifically aimed at governments within the context of the SDGs. As the new global set of targets relating to international development, agreed between governments, and succeeding the Millennium Development Goals, this is the crucial framework by which to address human rights and development over the next 15 years.

While the roles of communities, NGOs, multilateral organizations, the private sector and other actors will all be essential for LGBTI inclusion, policies and action at the level of national and local governments are among the most important. The recommendations below are therefore primarily aimed at governments, in addition to other actors (the full set of recommendations is found in Chapter 5 of the report).

Achieving the SDGs requires States to take actions to respect, protect and fulfil the human rights of all people, including LGBTI people. Governments should include the following actions in their national plans for achievement of the SDGs:

End poverty in all its forms everywhere (SDG 1)

Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all (SDG 8)

Many LGBTI people experience poverty and social disadvantage due to a complex intersection of social and economic factors, often compounded by family rejection, restricted education and employment opportunities due to discrimination. Governments and partners should:

- Provide programmes to reduce social and economic marginalization of LGBTI people through multipronged, holistic approaches that recognize diversity in sexual orientations, gender identities, gender expressions and sex characteristics.
- Ensure these programmes address intersecting factors that contribute to marginalization including sexual orientation, gender identity, gender expression, sex characteristics, caste, class, health status, disability, occupational status, religion, race, ethnicity and migration status.
- Ensure LGBTI people are not excluded from employment and driven into poverty due to stigma and discrimination in the workplace, education and training. Governments as employers should lead by example in efforts to eradicate stigma and discrimination including through enacting comprehensive anti-discrimination laws.
- Work in partnership with the private sector to promote inclusive workplace diversity policies and programmes that value and support LGBTI employees.
- Provide social protection programmes for economically disadvantaged LGBTI people, including access to welfare support, housing and microloan programmes to expand livelihood options.
- Address LGBTI people's needs as a component of poverty reduction and food security programmes.

Ensure healthy lives and promote wellbeing for all at all ages (SDG 3)

LGBTI people's mental and physical health needs are often poorly served by existing health services. LGBTI people's health issues should be included in the professional education and training of health care workers. Governments and partners should:

- Reduce stigma and discrimination affecting LGBTI people in access to health care through inclusion of LGBTI issues in medical school curricula, and ongoing professional education, and training and sensitization of health care workers. Ensure health care workers do not treat homosexuality, bisexuality, transgender status and intersex status as diseases, illnesses or forms of moral deviance. Ensure hospitals and other care facilities are safe for LGBTI people.
- Provide non-discriminatory health services and health promotion programmes that address the specific physical and mental health needs of each LGBTI population.
- Ensure health services are able to address the mental health needs of LGBTI people in a sensitive and evidence-based manner, recognizing the social causes and personal consequences of LGBTI experiences of stress, social isolation, depression, addictions, low self-esteem and self-blame.
- Provide transgender and intersex people with access to medically necessary health services without using diagnostic categorizations that stigmatize and pathologize their identities.
- Ensure people are not subject to 'conversion' therapy or other interventions that purport to alter a person's sexual orientation or gender identity.
- Ensure all HIV services and sexual and reproductive health services respect the diversity of sexual orientations, gender identities and bodies, and are inclusive of intersex people. Ensure accurate data is collected on HIV epidemiology among distinct LGBTI populations to inform programming.
- Promote an informed consent model of transgender health care based on the *Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities in Asia and the Pacific and the Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* issued by the World Professional Association for Transgender Health (WPATH), which provides guidance to

medical professionals in areas such as primary care, gynaecologic care, reproductive options, voice therapy, mental health services, and hormonal and surgical treatments.

- Prevent infanticide and prohibit selective abortion of people with intersex conditions.
- Prohibit genital surgery of intersex infants if it is not medically necessary. The right of intersex people to choose not to undergo sex assignment treatment must be respected. Medically necessary treatment of intersex people should take place under guidelines that ensure treatment is managed by multidisciplinary teams within a human rights framework. The guidelines should encourage deferral of non-necessary medical interventions on infants and children with intersex variations until such time as the person can give informed consent, and prohibit surgical interventions or other modifications to sex characteristics undertaken for primarily psychosocial reasons without informed consent.

Ensure inclusive and equitable quality education (SDG 4)

Educational authorities and partners should:

- Require all schools and other education providers to adopt anti-bullying policies to protect LGBTI students, and ensure teachers receive training on how to respond to homophobic and transphobic bullying.
- Integrate education on sexual orientation, gender identity, gender expression and intersex status into school curricula in age-appropriate ways.
- Provide non-discriminatory sex education to address taboos surrounding adolescent sexuality, sexual orientation, gender identity and gender expression and provide adolescents with access to accurate information about the diversity of sexualities, gender identities and sex variations.
- Recognize the right of students to freedom of gender expression in the school environment. Students should be allowed to wear uniforms and express an appearance that corresponds to the gender with which they identify.
- Provide all students, including transgender and intersex students, with access to safe toilets and bathroom facilities.
- Develop policies and practices to support transgender students who transition while at school, including by ensuring their rights to privacy, dignity and respect, and enabling their name and sex or gender details to be amended on school records.
- Provide educational resources for parents of LGBTI children.

Achieve gender equality (SDG 5)

Reduce inequalities within and among countries (SDG 10)

Legal and educational initiatives are required to eliminate all forms of discrimination that contribute to inequalities. Governments and partners should:

- Prohibit discrimination on the grounds of sexual orientation, gender identity, gender expression, and intersex status, particularly in the areas of employment, education, accommodation and access to health care and other services.
- Ensure gender equality laws and programmes include efforts to eliminate discrimination against people on the ground of their gender identity or gender expression. Programmes for the empowerment of women should address the needs of lesbians, bisexuals and transgender people.
- Address the rights of LGBTI people to equal treatment before the law in public statements of political leaders and senior members of government and in the key social policies of governments and partners, to raise awareness of LGBTI issues and to reshape values for greater acceptance of diversity.

- Support public education to combat stigma and discrimination, including through social media. Provide platforms for progressive politicians, religious and traditional leaders, and other opinion leaders and public figures (e.g. sports stars or media personalities) to speak out publicly in support of the human rights and social inclusion of LGBTI people.
- Recognize the gender identity of transgender people based on their self-defined gender identity, with no medical preconditions or exclusion of transgender people based on age, marital or family status, or other grounds. No one should be required to undergo medical procedures as a precondition for legal recognition of their gender identity.

Make cities and human settlements inclusive, safe, resilient and sustainable (SDG 11)

To make communities safe for LGBTI people, measures are required to address hate crimes, police abuses, domestic violence and other forms of violence. Decriminalization and legal recognition of LGBTI people are essential to support the full inclusion of LGBTI people in society. Governments and partners should:

- Develop policy and programme responses to homophobic, biphobic and transphobic violence. Introduce training for police to ensure they are equipped to respond appropriately to incidents of violence and to prevent police abuses such as extortion, harassment, violence, or use of vagrancy or other public order laws to target LGBTI people.
- Decriminalize 'cross-dressing'.
- Ensure that registration of sex or gender can be amended and affirmed through a simple administrative procedure at the request of the person concerned. All adults and capable minors, including transgender and intersex people, should be able to choose between female, male, a non-binary category (e.g. 'X', 'other', or 'third gender') or multiple options. Identifying as a non-binary or third gender should be voluntary.

Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels (SDG 16)

Investing in the capacity building of LGBTI organizations will enable LGBTI people to have a stronger voice in civil society, to access justice, to represent their needs to government and to hold governments accountable to their commitments. The greater participation of LGBTI people in civil and political life will result in more just, accountable and inclusive institutions. The media can also play a role in supporting peaceful and inclusive societies by providing positive coverage of LGBTI lives and promoting acceptance rather than perpetrating negative stereotypes. Governments and partners should:

- Enact legal protections from hate crimes perpetrated against LGBTI people, ensure domestic violence laws apply to all relationships, and ensure rape is a criminal offence regardless of the sex or gender identity of the victim.
- Decriminalize consensual homosexual conduct between adults.
- Provide rights to transgender people to choose the gender with which they identify, and to have full legal recognition and protection including the right to marry and to obtain passports and other identification documents that recognize their gender identity.
- Provide resources to NGOs to promote education to LGBTI people regarding their legal and human rights, and options for claiming and enforcing rights through the justice system.
- Ensure provision of legal aid for LGBTI people who have experienced discrimination, police abuses or other human rights violations.

- Ensure judges have access to human rights education and training that addresses the human rights of LGBTI people.
- Support LGBTI people to assume public positions and leadership roles to enable them to represent the concerns of their communities. Ensure LGBTI people have the right to take part in the conduct of public affairs, including the right to stand for public office, to participate in political life and to have equal access to public employment without discrimination on the basis of sexual orientation, gender identity, gender expression or intersex status.
- Provide opportunities to LGBTI people, through their organizations and national networks and in partnership with allies, to advocate their interests to government bodies, and to contribute to policy development and law reform.
- Support LGBTI organizations and organizations of families and friends of LGBTI people to engage in peer-led advocacy, to provide community development and support services to their communities and families, and to engage with civil society allies.



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