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PROMOTING AND PROTECTING THE RIGHTS OF  
**LESBIANS, BISEXUAL WOMEN,  
TRANSGENDER AND INTERSEX PERSONS**





UN Women is the UN organization dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide. UN Women supports Member States in setting global standards for achieving gender equality, and works with governments and civil society to design the laws, policies, programmes and services required to implement these standards. UN Women stands behind women's equal participation in all aspects of life, focusing on the following five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic empowerment; and making gender equality central to national development planning and budgeting. UN Women also coordinates and promotes the UN system's work in advancing gender equality.



OutRight Action International, founded in 1990 as the International Gay and Lesbian Human Rights Commission, is a leading international human rights organization dedicated to improving the lives of people who experience discrimination or abuse on the basis of their sexual orientation, gender identity or expression. We are dedicated to strengthening the capacity of the LGBT human rights movement worldwide to effectively conduct documentation of LGBT human rights violations and by engaging in human rights advocacy with partners around the globe. We work with the United Nations, regional human rights monitoring bodies and civil society partners. OutRight holds consultative status at the United Nations as a recognized Non-Governmental Organization representing the concerns and human rights of lesbian, gay bisexual and transgender people worldwide.

### **Summary of Proceedings: Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons**

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SUMMARY OF PROCEEDINGS

**PROMOTING AND PROTECTING THE RIGHTS OF  
LESBIANS, BISEXUAL WOMEN, TRANSGENDER  
AND INTERSEX PERSONS**

## LIST OF ACRONYMS

ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AHCR	Australian Human Rights Commission
AICHR	ASEAN Intergovernmental Commission on Human Rights
APF	Asia Pacific Forum of National Human Rights Institutions
APTN	Asia-Pacific Transgender Network
ASEAN	Association of Southeast Asian Nations
BDS	Blue Diamond Society
CAT	Cambodia Advocate Team
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CLGBT	CamASEAN LGBT Legal Support Project
CODIVA	Coalition for Diversity Action
ESCAP	Economic and Social Commission for Asia Pacific
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDAHO	International Day Against Homophobia
IDLO	International Development Law Organization
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
ILO	International Labour Organization
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Queer

MoU	Memorandum of Understanding
MSM	Men who have Sex with Men
NAPVAW	National Action Plan to Prevent Violence Against Women
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
OHCHR	Office of High Commissioner for Human Rights
PDHJ	Provedoria dos Direitos Humanos e Justiça
PFLAG	Parents and Friend of Lesbians and Gays
SOGIE	Sexual Orientation, Gender Identity and Expression
SOGII	Sexual Orientation, Gender Identity and Intersex
UNAIDS	Joint United Nations Programme on HIV/AIDS
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPR	Universal Periodic Review
VAW	Violence against women

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## FOREWORD

States are obligated to exercise due diligence and take necessary measures to protect, prevent, investigate, punish and redress acts of violence, (direct and indirect) discrimination against all people, including on grounds of sexual orientation and gender identity (SOGI). Yet people who do not follow dominant sexual and gender norms regularly experience discrimination related to housing, social security, employment, and are at increased risk of violence and abuse. In many countries around the world as well as in the region of South East Asia, states do not provide adequate protection and redress for abuses and discrimination faced by lesbian, gay, bisexual, transgender, intersex persons (LGBTI). At least 18 countries out of 38 in Asia Pacific region criminalize same sex relationships, which leads to wide-spread human rights abuses, mental and physical violence, social exclusion and discrimination at home, at school, in the workplace and in the media. Some countries also have rigorously enforced religious laws that criminalize same sex relationships and gender non-conformity (e.g., cross dressing).

UN Women Regional Office for Asia Pacific, through the Canada-funded 'Regional Programme on Improving Women's Human Rights in South East Asia' (CEDAW South East Asia Programme Phase II) organized a two-day consultation (29 February-1 March 2016,) on the rights of lesbians, bi-sexual women, transgender and intersex persons in collaboration with OutRight Action International. Eighty (80) participants attended, representing lesbian and bi-sexual groups, transgender person's networks, intersex networks, faith based organizations, national human rights institutions, ministries of justice, law enforcement officials, legal experts, and members of the UN family.

The meeting allowed the participants to network, share their programmatic and advocacy achievements and challenges and consider together an agenda for strengthened partnerships within ASEAN and also with UN Women. By the meeting's conclusion, the following outlines main elements of the discussion:

- LGBTI are especially marginalized because of homophobic stigma and discrimination. And this marginalization is even more extreme when attended by lack of economic opportunities or intersecting discriminations (sex/gender, disability, ethnic minority etc.).
- Documentation of violations is essential for LGBTI groups to make visible the range of violations experienced - discrimination, violence, criminalization, denial of socio-economic and political opportunities and agency and lack of autonomy. Such evidence is important to raise awareness, lobby for policy changes and for more impactful engagement with human rights treaty bodies.



- A comprehensive situation analysis of LGBTI issues from a rights based and feminist perspective is needed.
- There is inadequate understanding on the differential experiences of the diversity of LGBTI realities and in particular of intersex persons.
- Chronic underfunding for LGBTI groups- based on lgbt funders tracking report, 28 cents out of every US\$100 of development aid goes to LGBTQ groups, of which 8% goes to groups working with transgender persons, 3% to groups working with queer women and less than 1% for groups working with lesbians and bisexual women (data as presented by Ms. Jean Chong of ASEAN SOGI Caucus)
- Organisations led by LBT women are particularly marginalised from political influence
- Lack of strategies for disabled LBT women as they experience multiple discrimination from communities as well as service providers
- Need to engage more faith based leaders in changing social norms.
- It is also important to question intersectionality not only of oppression but of privilege – how can gender equality advocates, use privilege to advocate for change and for rights of LGBTI persons.
- Terminology for non-conforming SOGIE should be relevant to the ASEAN (Asian) context. Focus not only on gender identity but also gender expressions since visibility of gender expression that is non-conforming increases vulnerability of lesbians, bisexual women, trans and intersex individuals.
- Advocacy messages should be readily understandable: **No violence, No Discrimination, No Criminalisation, No Non-recognition**

UN Women wishes to acknowledge the partnership and active role played by Grace Poore, Regional Program Coordinator for Asia and the Pacific Islands, OutRight Action International; Brianna Harrison, Human Rights and Law Advisor, UNAIDS Asia Pacific; and Katri Kivioja, Programme Coordinator – Being LGBTI in Asia, UNDP Bangkok Regional Hub.

This report demonstrates the long way that LGBTI communities have come in many South East Asian countries, and the long way that many States still have to go to fully respect, protect and fulfil the human rights and freedoms of their LGBTI citizens. Let us continue to work together to ensure that this collective commitment and vision of freedom, justice and peace for all is achieved so that no one is left behind.



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## INTRODUCTION: LGBTI IN SOUTH EAST ASIA

South East Asia is a culturally rich and diverse region. Contributing to this rich diversity are the fluid and unique expressions of gender identity and sexual orientation across the region. Throughout its history, gender and sexual diversity has been an important part of societies across South East Asia. Gender diverse individuals, such as within the traditions of dao mau in Viet Nam and the Bugis peoples of Indonesia, have contributed to the culture and histories of their communities, often with strong links to spiritual beliefs or creation stories. In modern times, a greater range of sexual and gender diversity has become visible and a sense of community has started to emerge. Sexual and gender diversity is now celebrated annually at the Viet Pride march in Hanoi, Pink Dot events in Singapore, and several LGBTI (lesbian, gay, bisexual, transgender and intersex) festivals across Thailand. The emergence of community and the activism of strong LGBTI advocates has also resulted in changes to national legislation and policies. This can be seen, for example, in the abolition of a ban on same-sex marriages in Viet Nam, the recognition of a third gender within official identity documents in Nepal, and the inclusion of LBT women in Cambodia's *National Plan of Action to Prevent Violence Against Women 2014-2018*. There is also a growing sense of solidarity amongst LGBTI activists across South East Asia which has resulted in regional collaboration to further LGBTI rights, such as the formation of the ASEAN SOGIE Caucus which advocates for the inclusion of SOGIE (sexual orientation, gender identity and expression) issues in ASEAN (Association of Southeast Asian Nations) human rights mechanisms.

Despite this progress, there continues to be many challenges for LGBTI persons across the region. Deep seated prejudices, fear and anxiety towards sexual and gender diverse individuals remain, often attributed to religious doctrines, medical discourses, or the evolution of culturally constructed understandings of (hetero)sexuality and gender that have become naturalised and normalised over time. As a result, LGBTI individuals continue to face discrimination and exclusion at all levels. At a very personal level, LGBTI individuals may face rejection and discrimination from their families and communities, and, for those still struggling to accept their own sexual orientation or gender identity, even from themselves. At a systemic or structural level, many nations across South East Asia continue to discriminate against LGBTI persons within their laws and policies, including through the criminalisation of same-sex sexual activity, such as in Malaysia and Myanmar, or through the lack of legal protections for LGBTI persons. LGBTI individuals may also face hostility, discrimination or exclusion from institutions of the State, such as law enforcement, the judicial system, the healthcare system, or the education system, and from broader society, such as in the media, the private sector,

businesses and services, religious institutions, and at social or cultural events. This discrimination can range from subtle and unspoken to aggressive and violent as LGBTI people continue to be the targets of physical assault, sexual violence, rape, torture and murder, by both State and non-State actors.

Amongst this discrimination, lesbians, bisexual women, transgender persons and intersex persons face the additional challenges and barriers related to living within a patriarchal society. This includes the discrimination, exclusion and disempowerment that is a result of the subjugation of women and dominance of men across many spheres of society, both private and public. This has meant that, at times, the movement for LGBTI rights has also become a male-dominated movement with the concerns and voices of gay men rising to the forefront. This can be seen, for example, in the attention given to the HIV/AIDS crisis, which affects SOGI diverse women and men differently, and with LGBTI films, television and popular culture largely portraying the stories and experiences of gay men. Hence, LGBTI persons need to deal with the intersection of oppressions based on both SOGI and gender/sex. LGBTI persons experience both discrimination based on SOGI within a heteronormative society, as well as the uneven distribution of power and privilege experienced by women under the patriarchy. Therefore, the discrimination and exclusion faced by LGBTI persons is unique to and different from the experiences of gay men, and LGBTI persons deserve their own space to speak, authority to act, and opportunity to take ownership of their movement for human rights and dignity.


This report will explore the unique experiences, challenges and opportunities for LGBTI persons based on the proceedings of the *2016 Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons*. The Regional Consultation was focused on the specific needs of LGBTI persons in accordance with UN Women's mandate and programming areas.

This report will begin, in Section I, by discussing some definitions for lesbian, bisexual, transgender and intersex, with full acknowledgement of the rich diversity in sexual orientation and gender identity which may not be captured by these labels. The report will then provide an overview of the international human rights law and standards which can provide a framework for advocating for LGBTI rights. This will include an overview of key human rights treaties, instruments and principles as they apply to LGBTI persons. Then, the work of different United Nations agencies in the area of LGBTI rights will be discussed.

In Section II, the challenges faced by the LGBTI community will be explored. This section will draw upon the rich discussions and stories shared by the LGBTI community at the Regional Consultation. The differences in the challenges faced by lesbians, bisexual women, transgender persons and intersex persons will be highlighted, as well as the shared experiences of marginalisation within the broader women's movement and 'gay rights' movement. The importance of intersectionality will also be acknowledged.

In Section III, the report will share some good practice examples of advocacy for LGBTI rights across the region. This section will, again, draw on the diverse experiences and expertise of the participants at the Regional Consultation. Good practice examples in the areas of progressing legislation, engaging government ministries, creating change through the judicial system, working with law enforcement, the support of national human rights institutions, the power of youth advocacy, and the strength of working regionally, will be explored.

In Section IV, the report will discuss the various opportunities and entry points for advancing LGBTI rights which were identified by participants at the Regional Conference. These entry points will cover opportunities for creating change at all levels of society, including at the international and regional level, within the structures of the State, at the community level, and within the hearts and minds of individuals. The report will conclude with some final observations and recommendations for programming actions to strengthen the work of UN agencies on LGBTI rights.





# SECTION 1: LBTI and Human Rights



## 1. What is LGBTI?

The acronym 'LBTI' stands for lesbian, bisexual, transgender and intersex. It is an umbrella term which is used to refer to individuals who fall outside of heteronormative constructions of sexual orientation and gender identity. This section will attempt to provide some definitions for these terms. However, it is acknowledged that there is a great diversity in sexual orientation and gender identity, and that not all individuals fall neatly within these categories or wish to use these labels. It is also acknowledged that there are limitations in describing the experiences and identities of persons from across South East Asia within the confines of the English language which may not adequately capture the local discourses, understandings and expressions of sexuality and gender identity across the region. Nonetheless, it is important to provide a basic overview of the meaning of these terms.

According to the Yogyakarta Principles,<sup>1</sup> 'sexual orientation' can be understood as:  
**each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.**

The Yogyakarta Principles has defined 'gender identity' as:  
**each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.**

It should be noted that gender identity is different to gender expression. Gender identity refers to one's internal and personal sense of self, such as experiencing oneself as a woman, a man or as a different or other gender identity. Gender expression<sup>2</sup> refers to the external manifestation of gender, usually expressed through traits traditionally associated with masculinity or femininity, or other variations of gender expression. Gender expression may conform to socially sanctioned notions of gender (masculine man/feminine woman) or may vary from, reject or rebel against these socially sanctioned norms. These expressions of gender also vary between cultures and across time, as different behaviours, attire and characteristics have been considered as 'acceptable' for men and women across different societies and historical periods.

In regard to sexual orientation, in simple terms, lesbian refers to women who are emotionally and sexually attracted to other women, and bisexual women refers to

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1 *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*. Available at [http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm).

2 The International Gay and Lesbian Human Rights Commission (now OutRight Action International), 'Not Going to Take It Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka', in *Violence: Through the Lens of Lesbians, Bisexual Women and Trans People in Asia* (2014), p. 38. Available at <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>.

women who are emotionally and sexually attracted to both women and men. However, the breadth and depth of women's sexuality is far from simple. Rather than exclusive or immutable categories of sexual attraction, women's emotional, affectional and sexual attractions can be complex, intricate and fluid. For example, some theorists have categorised sexual attraction as existing on a scale from exclusively same-sex to exclusively opposite-sex attracted, with all possibilities in between. However, even this scale approach fails to capture the complexity of sexual attraction. For example, a woman's sexual preferences may change throughout the course of her lifetime and, at different points, she may be attracted more or less to one sex or gender, or to neither. The role of self-identification is also important. For example, a woman might identify as lesbian and engage in sexual relations with a man whilst still being a lesbian and a woman identifying as heterosexual may engage in sexual relations with another woman without 'becoming' bisexual. In addition, sexual orientation is different to gender identity and gender expression. Women of any sexual orientation may choose to express gender in a way that conforms to or defies gender expectations. Hence, lesbian and bisexual women (as well as heterosexual women) may appear masculine, feminine, androgynous, or express other gender variations, whilst still identifying as women.

The expression of lesbian or bisexual identity also varies between cultures across South East Asia, with each country having its own diverse history of how women have negotiated their sexual attraction and expression within the broader constructions of sexuality and gender within their cultures. Lesbians and bisexual women from across different cultures have unique ways of understanding and experiencing same-sex attraction such as, for example, the Tom and Dee culture in Thailand. Women across South East Asia may also reject the English words for lesbian and bisexual, instead preferring local terminology that embodies meanings that the English language does not adequately convey. That said, the terms lesbian and bisexual are still often used, alongside local terms, sometimes for convenience or for the purposes of movement building, awareness raising, or to organise politically. Hence, the acronym LGBTI will be used in this report with full acknowledgement of its strengths and limitations and the diversity of sexual orientations, gender identities, and gender expressions that exist across South East Asia.

In regard to gender identity, there is a lack of consensus over the definition of the term 'transgender' and it is highly debated within the LGBTI community due to implications of whom it may include or exclude. Generally speaking, the term transgender has been used as an umbrella term to cover a diverse range of gender identities and gender expressions.<sup>3</sup> The Asia-Pacific Transgender Network (APTN) has defined the term transgender as:

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3 Health Policy Project, Asia Pacific Transgender Network and United Nations Development Programme, *Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities in Asia and the Pacific* (2015), p. xi. Available at [http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic\\_governance/hiv\\_aids/blueprint-for-the-provision-of-comprehensive-care-for-trans-peop.html](http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/blueprint-for-the-provision-of-comprehensive-care-for-trans-peop.html).



**Persons who identify themselves in a different gender than that assigned to them at birth. They may express their identity differently to that expected of the gender role assigned to them at birth. Trans/transgender persons often identify themselves in ways that are locally, socially, culturally, religiously, or spiritually defined.<sup>4</sup>**

Self-identification is important for understanding the gender identity of a transgender person. A transgender person may identify as male, female or as a different gender identity. They may also adopt a range of gender expressions, including traits traditionally associated with masculinity, femininity, androgyny or other gender expressions. These expressions of gender may or may not conform to socially sanctioned binary notions of gender. Similar to sexual orientation, expressions of transgender vary across South East Asia, with each country having its own unique history, subculture, role in society, mythologies, understandings, terminology, and sense of community. The term transgender, however, is different to sexual orientation as it refers to a person's gender identity rather than a person's sexual attractions. Hence, a transgender person may also identify as lesbian, gay, bisexual, asexual, heterosexual or have other expressions for their sexual preferences.

According to the UN Office of the High Commissioner for Human Rights (OHCHR), intersex may be defined as "people [who] are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies."<sup>5</sup> Within the medical establishment, a wide variety of sex variations have been identified as falling within the category of intersex. These variations may be identifiable at birth, may not appear until puberty or adulthood, or may only be identified after a deceased person has undergone an autopsy. The concept of intersex itself, however, is a social construct. Within nature, there is a spectrum of variation in sexual anatomy and sex chromosomes. For example, sexual anatomy, such as the penis, vagina, breasts and scrotum, can vary in size, shape and morphology, as can the characteristics of our sex chromosomes.<sup>6</sup> However, within these natural variations, the determination of a person as male, female or intersex is a process of social categorisation:

**[N]ature doesn't decide where the category of "male" ends and the category of "intersex" begins, or where the category of "intersex" ends and the category of "female" begins. Humans decide. Humans (today, typically doctors) decide how small a penis has to be, or how unusual a combination of parts has to be, before it counts as intersex.<sup>7</sup>**

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4 Ibid.

5 Office of the High Commissioner for Human Rights, *Factsheet: Intersex* (2015). Available at [http://www.ohchr.org/Documents/Issues/Discrimination/LGBT/FactSheets/UNFE\\_FactSheet\\_Intersex\\_EN.pdf](http://www.ohchr.org/Documents/Issues/Discrimination/LGBT/FactSheets/UNFE_FactSheet_Intersex_EN.pdf).

6 Intersex Society of North America, *What is Intersex?*, [http://www.isna.org/faq/what\\_is\\_intersex](http://www.isna.org/faq/what_is_intersex).

7 Ibid. Emphasis in original.

Within the medical profession itself, however, there is a lack of consensus around when a person stops being 'male' or 'female' and starts to be 'intersex'. This demonstrates the role of culture in who can be classified as male, female or intersex.

In addition, the categorisation of a person as intersex is different to the person's gender identity, gender expression and sexual orientation. Intersex persons may self-identity as male, female or with a different or other gender identity, and may express themselves as masculine, feminine, androgynous or through other gender expressions. Intersex persons may also identify as heterosexual, lesbian, gay, bisexual, asexual or with other sexual preferences. Similar to LBT persons, the ways in which intersex people express their gender and sexuality is influenced by their culture and varies across South East Asia.

Transgender, intersex, and masculine or androgynous women (of any sexual orientation) demonstrate the great fluidity of gender, and destabilise the heteronormative and binary gender system of the masculine man and feminine woman. The women's movement has long argued that gender is different to sex, and that gender is a social construction which, within a patriarchal society, has often been to the disadvantage of the female sex. Traits associated with femininity have often been embedded with less value than traits associated with masculinity. Despite the social construction of gender, 'masculinity' and 'femininity' have been *naturalised* to appear as innate expressions of the male and female sex, respectively, rather than recognised as learnt and internalised modes of being and behaviours that are socially constructed. The radical and destabilising impact of transgender, intersex and 'masculine-seeming' women is that they *denaturalise* gender and reproduce gender expression upon the supposedly wrong body, thus breaking the link between the masculine-man and feminine-woman and demonstrating the performative and learnt nature of gender. Furthermore, the coexistence and interplay of both masculine and feminine traits within the same individual challenges the mutually exclusive and binary nature of the way that gender has been constructed and the idea that gender expression is inherent, stemming from one's biological sex, defined at birth, and unchanging. Hence, if the women's movement aims to break women free from the confinements of feminine gender roles and expectations, then advocating for the rights of transgender, intersex, lesbians and bisexual women to be express their gender freely without discrimination is both a radical challenge to the heteropatriarchy and a necessary step in the movement towards liberation.

## 2. International Human Rights Laws and Standards in relation to LGBTI persons

LGBTI persons are entitled to all of the rights and protections under international human rights law, free from discrimination based on sexual orientation, gender identity or any other status. As the *Universal Declaration of Human Rights* (UDHR) unequivocal states: "All human beings are born free and equal in dignity and rights."<sup>8</sup>

8 *Universal Declaration of Human Rights*. Available at <http://www.un.org/en/universal-declaration-human-rights/>.

The core principles in international human rights law of equality and non-discrimination, which is embodied in all major human rights instruments, means that all persons are equally entitled to human rights protection without discrimination. For example, Article 2 of the *International Covenant on Civil and Political Rights* (ICCPR) states that each State Party is obligated to respect the human rights of all individuals within its territory and jurisdiction “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>9</sup> The inclusion of “other status” means that the list of grounds upon which discrimination is prohibited is non-exhaustive and may include sexual orientation and gender identity. A number of UN treaty bodies, such as the Human Rights Committee, CEDAW Committee, and Committee on the Rights of the Child, have indeed confirmed that sexual orientation and gender identity are included among the prohibited grounds for discrimination under international human rights law.<sup>10</sup>

The application of human rights to LGBTI persons, which has not been expressly enshrined in the general provisions of international human rights treaties, has been articulated through the Yogyakarta Principles.<sup>11</sup> The Yogyakarta Principles outline the broad range of human rights standards that apply to protect persons of diverse sexual orientation and gender identity, and which form binding legal obligations upon State Parties.<sup>12</sup> The UN OHCHR has also recently released a report that outlines the application of existing international human rights law and standards to LGBTI persons and the legal obligations upon State Parties to respect, protect and fulfil these human rights.<sup>13</sup>

According to the Yogyakarta Principles, the human rights to which LGBTI persons are entitled include, *inter alia*, the right to life, liberty and security; the right to recognition before the law; the right to freedom from torture and cruel, inhuman or degrading treatment, and from arbitrary deprivation of liberty; the right to privacy and to found a family; the right to an adequate standard of living, housing, health, work and education; the right to freedom of expression, opinion, assembly and association; the right to take part in public life; the right to seek asylum; and the right to remedy and redress for

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9 *International Covenant on Civil and Political Rights*. Available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

10 Katia Chirizzi (UN OHCHR), ‘Overview of Normative Frameworks Protecting Human Rights of LGBTI Persons’, presentation at *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons* on 28 February 2016.

11 Yogyakarta Principles, above n 1.

12 Professor Vitit Muntarbhorn, ‘Legal Gender Recognition and the Yogyakarta Principles’, presentation at *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons* on 28 February 2016.

13 Report of the Office of the United Nations High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, UN Doc. A/HRC/29/23 (4 May 2015). Available at <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNReports.aspx>.

This report followed a resolution adopted by the Human Rights Council on human rights, sexual orientation and gender identity which expressed grave concern about the acts of violence and discrimination that were being perpetuated based upon sexual orientation and gender identity. See, Human Rights Council Resolution 17/19, *Human rights, sexual orientation and gender identity*, adopted 14 July 2011. Available at <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNResolutions.aspx>.

human rights violations suffered.<sup>14</sup> As for all persons, State Parties are obligated to respect, protect and fulfil the human rights of LGBTI persons. For example, State Parties are obligated to respect the rights of LGBTI persons' to privacy by not interfering with consensual adult sexual relations; to protect the rights of LGBTI persons through the enactment of anti-discrimination legislation; and to ensure the rights of LGBTI persons are fulfilled through the establishment of the political, economic or social systems necessary to provide LGBTI persons with equality of access to services such as healthcare and education.

In particular, the specific rights for women enshrined in the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* are important for LGBTI persons.<sup>15</sup> The CEDAW Committee has elaborated on the rights contained within the treaty through a number of General Recommendations.<sup>16</sup> Three General Recommendations expressly mentioned SOGI or LGBTI persons. General Recommendation No. 28, on the core obligations of State Parties under Article 2, recognises the role of intersectionality in women's experience of discrimination based on sex and gender, and acknowledges that discrimination against women is inextricably linked with other factors such as sexual orientation and gender identity. General Recommendation No. 27, on older women and the protection of their human rights, acknowledges that sexual orientation and gender identity may be one of the multiple and compounding forms of discrimination experienced by older women. General Recommendation No. 33, on women's access to justice, similarly acknowledges that a person's identity as LGBTI may be an intersecting and compounding ground for discrimination and that some women are disproportionality criminalised, such as lesbians, bisexual women, transgender and intersex persons.<sup>17</sup>

In addition, a number of other General Recommendations which do not expressly mention sexual orientation or gender identity may also apply to LGBTI persons. This includes: General Recommendation No. 19 on violence against women, which discusses the role of traditional attitudes and stereotyped gender roles in perpetuating violence against women; General Recommendation No. 23 on political and public life, which acknowledges the cultural traditions and religious beliefs that have played a part in confining women to the private sphere and excluding them from active participation in public life; General Recommendation No. 24 on women and health, which guarantees all women the right to access health care services, including for their sexual and reproductive health; General Recommendation No. 29 on economic consequences

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14 For full list, see Yogyakarta Principles, above n 1.

15 *The Convention on the Elimination of All Forms of Discrimination against Women*. Available at <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

16 UN Women, *Convention on the Elimination of All Forms of Discrimination Against Women: General Recommendations*, <http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>.

17 Deepa Bharathi (UN Women), 'CEDAW and its General Recommendations on SOGI', presentation at *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons* on 28 February 2016. Texts of the General Recommendations may be accessed at <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.



of marriage, family relations and their dissolution, which emphasises State Parties' obligation to address sex- and gender-based discrimination in relation to family relationships; and the Joint General Recommendation/General Comment No. 31 of the CEDAW Committee and No. 18 of the Committee on the Rights of the Child on harmful practices, which identifies gender stereotyped roles and attempts to exert control over the bodies and sexuality of women and girls as a harmful practice.<sup>18</sup>

### 3. The Work of United Nations Agencies and OutRight Action International on LGBTI Rights

#### **Joint Call by United Nations Entities to End Violence and Discrimination Against LGBTI persons**

On 29 September 2015, twelve UN agencies, including UN Women, came together to issue a joint call on States to act urgently to end violence and discrimination against LGBTI adults, adolescents and children.<sup>19</sup> UN entities called on States, as the primary duty bearers, including governments, parliaments, judiciaries and national human rights institutions, to protect LGBTI persons from violence, torture and ill-treatment, to repeal discriminatory laws, and to prohibit discrimination against LGBTI persons in all contexts. The joint statement also acknowledged the important role of community, religious and political leaders, workers' organisations, the private sector, health providers, civil society organisations, and the media, in ending violence and discrimination against LGBTI persons.<sup>20</sup>

#### **UN Women**

Joining the broader call by UN agencies to end violence and discrimination against LGBTI persons is a part of the ongoing work of UN Women to advance LGBTI rights. UN Women is currently implementing its Regional Programme on Improving Women's Human Rights in Southeast Asia (CEDAW SEA Phase II), supported by Global Affairs Canada, which covers eight countries across the region, namely Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Thailand, Timor-Leste and Viet Nam. The program focuses on enhancing the implementation and monitoring of CEDAW at a national level and promoting women's access to justice through awareness raising and capacity development of government branches and civil society organisations. Ending discrimination against LGBTI persons is an important part of the effective implementation of CEDAW.

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18 Bharathi, above n 17.

19 The twelve UN agencies were: the International Labour Organization (ILO), the Office of the High Commissioner for Human Rights (OHCHR), United Nations Development Programme (UNDP), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Population Fund (UNFPA), United Nations High Commissioner for Refugees (UNHCR), United Nations Children's Emergency Fund (UNICEF), United Nations Office on Drugs and Crime (UNODC), UN Women, World Food Programme (WFP), World Health Organization (WHO), and Joint United Nations Programme on HIV/AIDS (UNAIDS).

20 *Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People* (29 September 2015). Available at <http://asiapacific.unwomen.org/en/news-and-events/stories/2015/09/ending-violence-and-discrimination-lgbti-people>.

UN Women has also started working in several countries to promote and protect LGBTI rights. For example, in Cambodia, UN Women has partnered with Open Institute, women from LGBT communities, and women living with HIV, to develop a position paper on ending discrimination against LGBTI people and women living with HIV in all spheres of life. This paper was disseminated to duty bearers nationwide and presented to lawmakers at national and ASEAN levels. Thirty-six media stories that promoted public understanding of the rights of women and girls with HIV and LGBT people were also widely disseminated.

At the regional level, UN Women is currently supporting a campaign for and by HIV affected women and girls (including female sex workers, female drug users, migrant women and transgender persons), called *Unzip the Lips*. The campaign aims to foster a common platform for galvanizing advocacy efforts and facilitating the participation of HIV affected women in important regional and international human rights processes and events, such as the 2014 Beijing Plus 20+ review meeting. On 29 February and 1 March 2016, UN Women also facilitated a *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons*, the proceedings of which form the substance of this report. The Regional Consultation was held in partnership with OutRight Action International, and in collaboration with UNDP and UNAIDS. Its key objectives were to explore the issues and barriers facing LGBTI persons in South East Asia, establish and strengthen partnerships, share good practices in the region, and identify key areas for programming.<sup>21</sup>

### **OutRight Action International**

OutRight Action International is an international NGO that advocates for the protection and advancement of the basic rights of lesbian, gay, bisexual, transgender, intersex and queer people (LGBTIQ) as a part of the global human rights movement. OutRight works at all levels – individual, community, national, regional and international – to protect the rights of LGBTIQ people. OutRight works with LGBTIQ activists from around the world to help identify community-generated and focused solutions to address discrimination, violence, and human rights abuses based on sexual orientation, gender identity and gender expression. OutRight also trains LGBTIQ groups in human rights documentation and facilitates engagement with UN treaty bodies and regional human rights monitoring bodies to help activists bring international attention for their issues. In addition, OutRight works with policymakers to provide guidance on implementing progressive changes in support of LGBTIQ rights and to hold States accountable through UN human and regional human rights mechanisms.<sup>22</sup>

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21 Concept Note for the *Regional Conference on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons*, see Annex 1.

22 OutRight Action International, <https://www.outrightinternational.org/>.

### **UN Office of High Commissioner for Human Rights (OHCHR)**

The OHCHR works with States, national human rights institutions and civil society to promote and protect the human rights of all persons, including LGBTI people. The OHCHR has advocated for the worldwide repeal of laws criminalising LGBTI persons, as well as further measures to protect people from violence and discrimination on the grounds of their sexual orientation or gender identity. The ongoing work of the OHCHR includes: raising concerns and putting forward recommendations for law and policy reform in dialogues with governments; monitoring and exposing human rights violations affecting LGBTI persons; engaging in public advocacy for decriminalisation and other measures to strengthen human rights protection for LGBTI persons; working with UN partners to implement activities to counter discrimination and violence against LGBTI persons; supporting the Special Procedures and Human Rights Treaty Bodies to address discrimination based on sexual orientation and gender identity; and supporting the Universal Periodic Review which provides a potential forum for raising concerns and developing recommendations on LGBTI issues.<sup>23</sup> On 26 July 2013, the OHCHR also launched a public information campaign, called *Free & Equal*, which is designed to raise awareness on homophobic and transphobic violence and discrimination and to promote greater respect for the rights of LGBT people.<sup>24</sup>

### **United Nations Development Programme (UNDP)**

UNDP is implementing a regional initiative, with funding from the Swedish Embassy in Bangkok and USAID, called *Being LGBTI in Asia*. The initiative aims to reduce the marginalisation and exclusion of LGBTI people across Asia. Initiated in 2012 and set to run until December 2017, the programme addresses inequality, violence and discrimination on the basis of sexual orientation, gender identity or intersex status, and promotes universal access to health and social services. The initiative provides a platform for multiple stakeholders – governments, national human rights institutions, civil society, the private sector, media, faith and community leaders, and educators – to engage in dialogue around LGBTI issues. Activities include: working with the private sector on discrimination in the workplace (with the International Labour Organization (ILO)); conducting media sensitisation; addressing bullying in educational settings (with the United Nations Educational, Scientific and Cultural Organization (UNESCO)); building the capacity of national human rights institutions on LGBTI issues; building the capacity of regional civil society organisations; undertaking research on employment discrimination, mental health and violence; and transgender health and legal gender recognition. Regional partners include the Asia Pacific Forum of National Human Rights Institutions and regional civil society networks.<sup>25</sup>

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23 Office of the High Commissioner for Human Rights (OHCHR), *Combatting discrimination based on sexual orientation and gender identity*, <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>.e Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons, see Annex 1.

24 Free & Equal, <https://www.unfe.org>.

25 Katri Kivioja (UNDP), email correspondence dated 8 March 2016. For more information, see UNDP, *Being LGBTI in Asia*, <http://www.asia-pacific.undp.org/content/rbap/en/home/operations/projects/overview/being-lgbt-in-asia.html>.



### **Joint United Nations Programme on HIV/AIDS (UNAIDS)**

UNAIDS works with the LGBTI community to ensure meaningful civil society involvement in the context of supporting access to HIV services. The work of UNAIDS involves: supporting countries to monitor the HIV epidemic and response, including the gathering of disaggregated data for populations at higher risk, such as transgender people; driving political advocacy, including for rights-based responses to HIV and the rights of vulnerable and at risk groups; and providing strategic policy advice and technical assistance to support countries to optimise resources and deliver results, such as through engagement with civil society. The activities undertaken by UNAIDS include: providing capacity building for civil society organisations to support their participation in policy dialogues on human rights in the context of HIV and health, such as the Asia-Pacific Transgender Network (APTN); supporting communities, including transgender communities, to document rights violations and advocate for change; providing technical assistance on law reform to improve the implementation of LGBTI rights and programs to reduce stigma and discrimination against LGBTI persons, such as in healthcare settings; and engaging in advocacy with governments to create enabling environments for access to services and human rights-based policies and programs.<sup>26</sup>

The UNAIDS Regional Support Team also supports communities and organisations of men who have sex with men (MSM) to generate data, implement services, and conduct advocacy with key stakeholders for more effective and rights-based HIV responses. As MSM communities also promote human rights and non-discrimination on the grounds of SOGI and challenge the same harmful heteronormative constructions of gender and sex that underpins the exclusion, discrimination and violence faced by LGBTI persons, and by women more generally, this work contributes to the more direct efforts on rights of LGBTI persons.<sup>27</sup>

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26 Brianna Harrison (UNAIDS), email correspondence dated 7 March 2016.

27 Ibid.



## SECTION 3: Challenges faced by the LGBTI Community and Individuals

Deeply embedded patterns of homophobia, transphobia and heterosexism create many challenges and barriers and for lesbians, bisexual women, transgender persons and intersex persons. Whilst in recent years much progress has been made towards greater acceptance and equality in some countries across South East Asia, prejudices, fear and misunderstanding remains strong among some individuals, communities, leaders and State authorities. The extent and forms of discrimination experiences by LGBTI persons can vary widely between countries and within countries. The experience of a young, middle class and educated lesbian in Viet Nam, with the country's recent changes in laws and policies and a growing LGBTI community, will be very different from the experience of a Muslim transgender person living in the Aceh province of Indonesia under a strict Islamic criminal code. Hence, other identities, privileges and oppressions may intersect to create vastly different experiences for LGBTI persons. This section will explore some of the key challenges faced by LGBTI persons across South East Asia as discussed at the Regional Conference, whilst keeping in mind that an individual's experience will be unique to their country, culture, ethnicity, class, social and religious context, and personal circumstances.

## 1. Issues faced by Lesbians

Lesbians in South East Asia continue to face a multitude of barriers, challenges and discrimination based on their sexual orientation.<sup>28</sup> Although the experience of lesbians across South East Asia can vary greatly depending upon the political, social and religious climate, cultural context, different levels of community acceptance, and individual histories and circumstances, the so-called 'Asian values' espoused by many State and community leaders frames many women's experiences of negotiating their identities and rights as lesbians. The value placed in communitarianism, at a national, communal and familial level, within a hetero-patriarchal society, often means that women are expected to subjugate their own needs, desires and identities for the benefit of the broader collective, whether that be the family, community or nation.<sup>29</sup> Within the context of communitarian or 'Asian' values, asserting individualism or fulfilling your own desires in a manner which may destabilise community relations and harmony or bring shame to your family is considered unacceptable.

Within a hetero-patriarchal society, the expression of sexual desire by women in general is rarely tolerated. Hence, women who express attraction to other women may be met with particularly strong disapproval. Lesbians can face severe social, verbal and, at times, physical punishment for transgressing accepted expressions of sexual desire or rejecting tradition gender roles, sometimes even at the hands of their own family or community. Lesbians may be forcefully silenced or trivialised and dismissed to ensure

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28 This section is based on the presentation and discussions from Jean Chong (Sayoni/ASEAN SOGIE Caucus), 'Specific Challenges Facing Lesbian and Bisexual Women' at the *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons* on 28 February 2016.

29 Ibid.

that they remain invisible.<sup>30</sup> The forceful ‘correction’ of their sexual orientation can include social ostracism, physical violence, mental cruelty, and even sexual violence, such as corrective rape, which is a severe human rights violation and can result in great mental suffering and physical injury.<sup>31</sup> Furthermore, there is an “added layer of vulnerability for people with non-conforming gender expression [as] they are targeted for defying the assumption of heterosexuality and gender norms (through their clothing, hair, behavior, speech, and who they partner with). For instance, women who appear or are perceived as “typically masculine”... [can] become targets for violence.”<sup>32</sup>

Lesbians also face discrimination, exclusion and abuse when engaging with broader society and State institutions. For example, young lesbian women can experience difficulties in the education system due to discrimination from fellow students, teachers and other parents. Ridicule and social isolation can hamper young women’s ability to learn and achieve at school. In severe cases, this can lead to young women leaving the school system early and foregoing their educational qualifications which can place them at a disadvantage in other areas of their lives.

Lesbians may also face discrimination, exclusion and abuse in the workplace. In addition to barriers based upon their sex, such as sexual harassment, sexist work cultures, and the reaching the ‘glass ceiling’, lesbians may also face discrimination, harassment, rejection and ridicule based on their sexual orientation, which may be of a homophobic or sexual nature. This can occur at any point in their employment experience – recruitment, training, employment, dismissal and retirement – and may be perpetrated by anyone with whom they may interact, such as customers, clients, colleagues and managers. The level of discrimination lesbians face may be related to the workplace culture, how ‘out’ they are about their sexual orientation, or the extent to which they do or do not conform to traditional feminine gender expressions within their culture. A woman who displays more ‘masculine’ traits may also be seen as ‘trying to be a man’ and as needing to be put back into her ‘rightful’ place. This may be done through subjecting her to various forms of violence to ‘feminise’ her by subjugation.<sup>33</sup>

Lesbians may also face discrimination when accessing services. Lesbians may have specific health care needs which medical professionals may not have been trained to address and may be refused services or given incorrect treatment. For example, lesbians who seek the services of a mental health professional for conditions such as depression or anxiety, which are often the result of homophobia or discrimination, may be incorrectly advised to change their sexual orientation or gender expression as this may be seen as the cause of the problem. Lesbians may also face similar discrimination, abuse

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30 Comment from Indrajya Saroha (OutRight Action International), dated 26 March 2016.

31 Comment from Grace Poore (OutRight Action International), dated 26 March 2016.

32 The International Gay and Lesbian Human Rights Commission (now OutRight Action International), *Violence: Through the Lens of Lesbians, Bisexual Women and Trans People in Asia* (2014), p. 25. Available at <https://www.outrightinternational.org/content/violence-through-lens-lbt-people-asia>.

33 Saroha, above n 30.

and homophobia when interacting with all other facets of society, such as accessing housing, attaining goods and services, interacting with law enforcement or the justice system, partaking in public or political life, engaging in worship or religious activities, or participating in social or cultural events.<sup>34</sup> In some South East Asian countries, this discrimination is supported by the law, such as through the criminalisation of same-sex relations, and in many States, lesbians are not protected under the law, such as through a lack of anti-discrimination legislation or the failure to recognise same-sex relationships.

## 2. Issues faced by Bisexual Women

Bisexual women may face similar forms of discrimination and abuse to lesbians when they are in same-sex relationships, express same-sex desires, or fail to conform to traditional feminine appearances or female gender roles within their culture. Again, the experience of bisexual women varies greatly across South East Asia, depending upon their cultural context and individual circumstances. And, similarly, bisexual women need to negotiate their sexual and gender expressions within a broader context of communitarian 'Asian' values and a hetero-patriarchal society.

However, the experience of bisexual women may be different to lesbians in a number of ways. Bisexual women may face rejection and discrimination from both the broader heteronormative culture as well as the lesbian subculture, as they are considered 'too gay' and 'too straight' to belong to either culture. The sexual orientation of bisexual women is often considered to be a flippant or not a 'serious' or 'real' sexual orientation, particularly for bisexual women who 'appear' to be straight. Both the heterosexual community and lesbian community can often pressure bisexual women to 'make up their minds' and 'choose' whether they are gay or straight. Bisexual women are also stereotyped as promiscuous or untrustworthy sexual partners who may turn to the 'other side' at any moment. Bisexual women may need to continually deal with this insecurity within their personal relationships, which places strain on their mental health and self-esteem as their sexuality cannot be 'trusted'. Furthermore, in sexually repressive communities in which female sexual desire is seen as a threat to the social fabric of society, the desires of bisexual women are doubly threatening and bisexual women may be perceived as particularly wanton women whose sexuality needs to be reined in and controlled.<sup>35</sup>

The sexuality of bisexual women is also trivialised and colonised through the 'heterosexual male gaze', through which women's bisexuality becomes a form of entertainment for men. This is perpetuated in pornography in which bisexual behaviour by women is no longer an expression of their desire but performed for the male onlooker. Outside of pornography, the assumption of some heterosexual men may also be that a woman's

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34 Chong, above n 28.

35 Saroha, above n 30.



bisexuality exists for men's sexual gratification and bisexual women may be harassed by men for sexual access and inclusion.<sup>36</sup>

In addition, bisexual women may be seen as more easily 'cured' by their families and broader communities. In some South East Asia societies, the idea of 'sexual orientation' may not be well recognised and digression from the norm or 'deviant' sexual activity may be seen as simply a form of behaviour. This may be particularly true in the case of bisexuality.<sup>37</sup> Bisexual women may experience immense pressure to choose to behave 'correctly', that is, to choose only male partners. Whereas there may be some reluctant acceptance of lesbians' desires to choose female partners, the family and communities of bisexual women may always hold 'hope' and, therefore, exert pressure for bisexual women to leave their female partners and find a male partner. When bisexual women are in same-sex relationships or express gender non-conformity, however, they may experience similar forms of discrimination, ostracism and abuse as lesbians, and this discrimination may also exist in all spheres of society, such as in education, employment, health care, goods and services, law enforcement, religion, and at social and cultural activities.

### 3. Issues faced by Transgender Persons

Transgender persons in South East Asia continue to face high levels of discrimination, violence and violations of their human rights across all aspects of their lives.<sup>38</sup> Transgender persons often experience social and physical punishment for transgressing heteronormative gender roles and gender expressions. Again, communitarian and so-called 'Asian' values means that transgender persons need to negotiate their gender identity and gender expressions within a framework that prioritises communal cohesion and harmony. The potentially disruptive effect that a transgender person's gender identity may have can be severely punished, such as through social ostracism, coercive 'correcting' of their gender expressions, physical punishment, or institutionalisation. Furthermore, within a patriarchal society in which the needs of women are often already subjugated, female-to-male transgender persons (transgender men) may be particularly invisible.<sup>39</sup>

Whilst many South East Asian societies recognise a third gender, there is still very little understanding and very severe forms of stigma towards transgender persons. Although the presence of some transgender communities is acknowledged and visible, the spaces and roles available to them are often extremely limited. For example, the attitude towards the Hijra community in South Asia is generally one of superstition, fear,

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36 Ibid.

37 Ibid.

38 This section is based on the presentation and discussions from Natt Kraipet (Asia-Pacific Transgender Network), 'Our Issues, Our Rights' at the *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons* on 28 February 2016.

39 Poore, above n 31.

mysticism and, in some specific traditional spaces and rituals, even respect stemming from that fear. This allows begging to become a means through which to support themselves in a society that excludes them from pursuing other forms of livelihood. In Thailand, it is believed that kathoeyes are paying for their bad deeds from past lives. However, they tend to enjoy more acceptance compared to the Hijra community and have a slightly wider array of professions open to them.<sup>40</sup>

Transgender people are often the target of harassment, abuse and violence, including torture and murder. According to the Trans Murder Monitoring Project, between January 2008 and December 2014, 1,731 transgender people were killed in 62 countries, which amounts to one transgender person being murdered almost every day.<sup>41</sup> However, even this high figure may be an underestimation due to murders not being recorded or victims not being identified as transgender. In many countries across the region, the murders of transgender people may also fail to be investigated due to the apathy, corruption or transphobia of police authorities.<sup>42</sup> The high profile murder of Jennifer Laude in the Philippines in 2014 demonstrates that significant levels of violence, at times resulting in death, continue to be faced the transgender community in South East Asia.

Transgender people also continue to experience discrimination and stigmatisation by the medical profession. Many health care professionals are not trained to provide adequate healthcare to transgender individuals and may refuse to treat transgender patients or offer the wrong treatment. Many medical professionals also continue to be plagued with misconceptions, fear and personal prejudices against transgender people. This is compounded by the fact that transgender people are still classified as suffering from a mental disorder by leading medical institutions. For example, Gender Identity Disorder appears under the category of personality and behaviour disorders within the *International Classification of Diseases and Related Health Problems* developed by the World Health Organization.<sup>43</sup>

Furthermore, transgender people have a high level of specific healthcare needs, often related to their transition. This includes hormonal treatments and other medical interventions that are necessary for their gender expression. Due to the stigma and discrimination that often exists within the healthcare system, transgender people may choose to transition without or with minimal supervision by medical practitioners which puts them at risk of additional and unnecessary medical complications. These challenges are compounded for transgender men as fewer options are available for them as compared to transgender women. For transgender men, surgery is often more expensive, complicated and less frequent than for transgender women.<sup>44</sup>

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40 Saroha, above n 30.

41 Trans Murder Monitoring Project, <http://tgeu.org/tmm/>.

42 Saroha, above n 30.

43 World Health Organization, *The ICD-10 Classification of Mental and Behavioural Disorders*, Section F64 <http://www.who.int/classifications/icd/en/bluebook.pdf>.

44 Saroha, above n 30.



When transgender people enter the healthcare system, for their transition or for other health care concerns, the level of healthcare provided may also be of a low standard or inappropriate for their needs. For example, in hospital settings with sex segregated wards, transgender persons may be placed in a ward that conflicts with their gender identity. This may cause them significant distress and subject them to transphobia from other patients or medical staff. Transgender people also suffer disproportionality from or may be at higher risk of some health problems, such as HIV/AIDS, for which there has been little research to understand and action to address these issues.

Another challenge faced by transgender people is legal recognition of their gender identity. Legal recognition for transgender people varies greatly across the South East Asian and broader Asian region. For example, there is no legal recognition in countries such as Thailand, the Philippines and Malaysia. Other countries, such as India, Nepal and Pakistan, offer legal recognition of a 'third gender' or 'other gender'. Whilst this is a positive step, there continues to be debate amongst the transgender community as to whether this recognition is sufficient and concerns around the hierarchical relationship between 'male/female' and 'other'.<sup>45</sup> In some countries, such as Viet Nam, Singapore, South Korea, Japan, Taiwan, China and Honk Kong, transgender people are legally permitted to change their gender identity. However, this is contingent upon undergoing gender affirmation surgery and/or sterilisation. For many transgender people, such surgery may be inaccessible or too expensive, or they may not want to undertake the surgery due to possible medical complications or effects on their health. Hence, gender identity laws that require medical intervention do not offer a sufficient level of gender recognition and place an unnecessarily high burden of 'proof' on transgender people which may be incongruent with how they wish to express their gender. As recognition before the law is a fundamental human right, the failure to recognise gender identity may be considered a human rights violation.

Transgender people also continue to face high levels of discrimination, stigma, ostracism and abuse within the general community. For example, young transgender people in the school system are often subjected to bullying and harassment and may be unable to continue with their education. For example, it has been reported that in Viet Nam, 85% of transgender girls are unable to continue their secondary schooling due to assaults and bullying.<sup>46</sup> Transgender people face similar discrimination, harassment and abuse in other areas of their lives, such as employment, attaining goods and services, by religious bodies, sporting clubs, at social and cultural events, and within the law enforcement and judiciary systems. Engaging with the administration systems of government institutions or private organisations may also be challenging as transgender people are often only presented with the options of male and female on

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45 Kailash Shrestha (Bhumika)(Blue Diamond Society), 'Community Advocacy', presentation at *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons* on 1 March 2016.

46 Hoang, Anh T. and Nguyen, Vinh T., *An online study of stigma, discrimination and violence against homosexual, bisexual, transgender, transsexual, and intersex people at school* (2013), Centre for Creative Initiatives in Health and Population (CCIHP).

forms or other documentation but are required to answer 'truthfully'. This can create problems for transgender people when seeking employment, applying for services, or at immigration when travelling across country borders.<sup>47</sup>

## 4. Issues faced by Intersex Persons

Intersex persons across South East Asia face unique challenges and barriers.<sup>48</sup> These difficulties can begin at the time of their birth if their intersex condition is immediately identifiable. Babies that are identified as intersex at birth are often subjected to the judgement of medical professionals and are assigned to be either the male or female sex. This can include unnecessary physical interventions, such as surgery, to change or 'fix' their genitalia. Hence, newborn babies who are classified as intersex are denied all autonomy over their bodies and their sex. Advocates have argued that these medical procedures are akin to genital mutilation and should be prohibited. In some countries across South East Asia, intersex babies may even be killed and infanticide has been reported as a 'solution' to a baby being born as intersex. The family of an intersex baby is often the subject of pity by others in the community due to the 'grave misfortune' that has been bestowed on them and, as sympathy is reserved for the parents rather than the baby, infanticide is often justified under these circumstances. This may be particularly true in patriarchal societies where families desire and value male children. If an intersex child is born after a female child in an attempt to have a male child, this is perceived as being an even greater stroke of 'bad luck' for the family.<sup>49</sup>

If a newborn baby is identified as intersex and is assigned either the male or female sex by medical professionals or by the parents, the child will often grow up facing strict surveillance and strong disciplining from the parents to display the appropriate gender characteristics for their assigned sex, regardless of the child's own desired gender expressions. This can cause great mental and emotional strain on the developing child. Transgression of gender norms can result in severe punishment for the child and, similar to young transgender persons, can lead to ostracism, bullying or harassment by other children or adults.

Intersex persons whose intersex characteristics do not appear until puberty or adulthood, or who grow up to identify with the opposite gender to which they were assigned, will also need to go through a period of 'coming out' as a different gender. During their transition between genders, intersex persons can face similar forms of discrimination as transgender persons, and similar struggles to have their gender identity recognised. This includes discrimination within the healthcare system as

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47 Kraipet, above n 38.

48 This section is based on the presentation and discussions from Nada Chaiyajit (Together for Equality Action), 'Specific Challenges Facing Intersex Persons' at the *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons* on 28 February 2016.

49 Saroha, above n 30.

medical professionals are often not trained to provide adequate healthcare to intersex persons, especially in regard to their sexual and reproductive health, as they mature into adulthood. Intersex persons may require access to certain surgical procedures to improve their health or to correct previous surgical procedures, and these may not be accessible. Similar to transgender people, intersex persons may also face discrimination, abuse and exclusion in all areas of society for their gender transgression, such as within the family and community, in education, employment, housing, attaining goods and services, law enforcement, the judicial system, government and public administration, religious institutions, and at social and cultural events.

In addition, intersex people can face marginalisation within the LGBTI community. Intersex persons generally comprise a minority within LGBTI organisations and the unique challenges and barriers that intersex persons face can often be excluded from the LGBTI agenda. As a small minority, intersex individuals may also not be able to build the same sense of community and support among themselves and, therefore, may experience a greater sense of isolation and loneliness.<sup>50</sup> In addition, some intersex persons may not wish to be included in the same acronym as LGBT as they argue that their specific issues and challenges are separate from and different to those faced by LGBT people. However, intersex activism, as separate from LGBT activism, is to date not yet well organised.<sup>51</sup>

## 5. Exclusion of or Discrimination Against LGBTI in Women's Organisations

The women's movement and women's organisations may appear as natural allies for LGBTI persons who are fighting for recognition and rights.<sup>52</sup> However, LGBTI persons may often find themselves excluded from, invisible in, or discriminated against by women's rights activists and organisations. This marginalisation may be due to similar prejudices, misunderstandings or fear which underpins the marginalisation of LGBTI persons in broader society. In other cases, the exclusion of LGBTI persons may be politically motivated as women's organisations wish to prioritise and work on the issues that are deemed as 'women's issues', namely the issues faced by heterosexual women, before working on the 'other issues' that LGBTI persons face. The presence of LGBTI persons may also be seen as damaging the reputation of or being an embarrassment to the organisation, as women's organisations may be plagued by the same homophobia, transphobia or heterosexism as is present in broader heteronormative society. Some women's rights activists and organisations may also continue to hold heteronormative and binary notions of gender and, thereby, exclude transgender women on the grounds that they are not 'real' women and ostracise transgender men for identifying as male.<sup>53</sup>

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50 Chaiyajit, above n 48.

51 Kivioja, above n 25.

52 This section is based on the presentation and discussions from Chong, above n 28.

53 Saroha, above n 30.

The discrimination and exclusion faced by LGBTI people can be seen, for example, in relation to the engagement of women's organisations in the CEDAW State reporting process. LGBTI people have often been excluded from or invisible within national processes or community consultations which has made it difficult for them to meaningfully contribute to NGO shadow reports.<sup>54</sup> This is particularly problematic when LGBTI activists or organisations do not have the same level of resources or expertise as larger women's NGOs to enable them to engage with the CEDAW reporting process properly. When LGBTI issues have been included, they have often been relegated to the category of 'other issues' rather than being recognised equally alongside the issues faced by heterosexual women. For example, domestic violence occurs within both same-sex and opposite-sex relationships, but the violence experienced by women in same-sex relationships may not be recognised or may not be considered as 'serious' as violence perpetrated by male partners. This exclusion, invisibility and discrimination may be even greater for transgender women, transgender men, and intersex persons. Hence, discrimination by women's organisations or within the women's movement can result in even further marginalisation and oppression of LGBTI people.

## 6. Marginalisation of LGBTI in 'Gay Rights'/LGBTI Organisations

The broader LGBTI or 'gay rights' movement may also seem like a natural alliance for LGBTI persons.<sup>55</sup> However, in a similar manner to which heteronormativity affects the women's movement, patriarchal privilege can affect LGBTI organisations and the gay rights movement. Drawing upon their patriarchal privilege, gay men often dominate LGBTI organisations and the agenda for the movement for LGBTI rights. This is evident in gay men often taking leadership roles in LGBTI organisations and LGBTI safe sex initiatives often focusing on the needs of MSM, such as through promoting condom use, rather than the sexual health needs of LGBTI persons. Gay male voices are also more prominent in LGBTI media, films, and scholarship. For example, at the 2015 Bangkok Gay and Lesbian Film Festival, the majority of the movies screened told the stories of persons born male, that is, either gay men or male-to-female transgender persons. The stories and viewpoints of lesbians, bisexual women, female-to-male transgender persons and intersex persons often continue to be marginalised within an already marginalised community.

In addition, gay or bisexual men may exhibit similar sexist behaviour towards women as is experienced in broader patriarchal society. This may include sexual harassment, sexist or offensive comments or jokes, belittling or excluding women from discussions and decision making, and holding stereotyped views of the capabilities or roles of women. For LGBTI women who are already experiencing these behaviours in broader

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54 Chong, above n 28.

55 This section is based on the presentations and discussions from Chong, above n 28.



patriarchal society, it can be exhausting to also deal with sexism within the LGBTI movement. Again, within this patriarchal framework, the existence and experiences of transgender and intersex persons, who are not 'really' men or women, may be even further marginalised.

## 7. Intersectionality

The challenges faced by LGBTI persons may be compounded by intersectionality with other marginalised identities.<sup>56</sup> Intersectionality is a concept used in critical theory, including feminist theory, to describe the way that different systems of power and oppression intersect to create varying intensities, configurations and experiences of oppression. For example, different systems of power and inequality related to particular identities, such as race, religion, class, age,<sup>57</sup> (dis)ability, gender, and sexual orientation, do not operate independently but interact to intensify or buffer one's experience of oppression or privilege. For example, a transgender person who has a high socio-economic status may have the wealth to buffer some of the discrimination and barriers associated with being transgender. They may be able to afford the highest level of healthcare, may be less dependent on and, therefore, restricted by their family, and may even be able to travel abroad to more transgender friendly countries or locations for work, leisure or to live. On the other hand, a lesbian woman living with a disability may be even more vulnerable to harassment and abuse, may be more restricted by the demands of her family or community, and may struggle to achieve the same level of bodily autonomy to express her sexuality. Furthermore, for LGBTI persons who live with multiple intersecting marginalised identities, it can be difficult to know the reason for the discrimination, harassment or abuse that they experience, and their mistreatment may often be the result of a combination of systems of oppression.<sup>58</sup>

Intersectionality not only has consequences for an individual's experience of discrimination and oppression, but creates unequal privileges and power within the movement for LGBTI rights. As discussed, gay men, who have the additional privilege of being male within a patriarchal society, may dominate LGBTI organisations or agendas. In a similar manner, it is often those members of the LGBTI community that experience relatively more privilege, such as those who are middle or upper class, educated, able bodied, and of the dominant ethnicity or religion, who often have the social capital that offers them the security to speak up for their rights. Their relative position of privilege may also offer them access to platforms upon which they can speak and access to powerholders to whom they can to speak. Hence, the members of the LGBTI community

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56 Ibid.

57 The intersectionality between discrimination based on SOGI and age, as well as other dimensions, is acknowledged in General Recommendation No. 27 by the CEDAW Committee (paragraph 13). In addition, General Recommendation No. 33 recognises the importance of intersecting or compounding discrimination, including based on identity as LGBTI, on women's access to justice (paragraph 8). Available at <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.

58 Chong, above n 28.

who end up 'representing' LGBTI people can often come from relatively privileged backgrounds and may not have experienced the same level of marginalisation that comes from an intersection of oppressions. On the other hand, those members of the LGBTI community who do have greater experiences of oppression are often further marginalised within the LGTBTI movement, despite the insights that they may have into the operation of power and privilege and how inequality should be addressed. Therefore, one of the challenges facing the LGTBTI movement and those working for LGBTI rights is to provide equal space, recognition and dignity to marginalised members of the community and to understand that oppression based on sexual orientation and gender identity operates alongside other forms of oppression and privilege.





# SECTION 3: Good Practice Examples



Despite the challenges faced by the LGBTI community, many activists and organisations have continued to advocate for LGBTI rights and have been successful in achieving widespread and long-term change. LGBTI organisations and key stakeholders, such as government ministries, the judicial system, and NHRIs, have demonstrated a range of good practices in advancing LGBTI rights across the region. The following section contains some examples of good practice that were shared by participants at the Regional Conference. These good practice examples may serve as inspiration or learning experiences for others working in the area of LGBTI rights.<sup>59</sup>

## 1. Progressing Legislation

Providing legal protection for LGBTI persons under national legislation is an important step in achieving equality. The legal protection of LGBTI persons is also necessary for State Parties to fulfil their human rights treaty obligations. These legal protections should include, *inter alia*, the decriminalisation of consensual adult same-sex sexual relations, legal recognition and equal protection of same-sex partnerships, decriminalisation of medical interventions to change gender identity, legal recognition of changes to gender, protection of the bodily autonomy of intersex minors, prohibition of discrimination and violence against LGBTI persons, avenues for effective legal remedy and redress for human rights violations experienced by LGBTI persons, and positive measures to ensure equality of access and participation for LGBTI persons in all spheres of life.

Whilst no country in South East Asia has yet to grant LGBTI persons full legal protection and equality, some countries have made progress in reforming and enacting laws to provide greater protections and freedoms to their LGBTI community. For example, Viet Nam has been praised for recent changes in its legislation in relation to same-sex partnerships. These changes began in July 2012 when the Minister of Justice, Ha Hung Cuong, spoke out publically against the prejudices faced by LGBTI people and raised the issue of same-sex marriage. This was significant as it was the first occasion in which a government official had spoken publically in support of the LGBTI community. This was followed by supportive comments by the Minister of Health who also spoke out in favour of equal rights for same-sex attracted persons.<sup>60</sup> On 20 December 2012, the Ministry of Justice organised a workshop which brought together international and Vietnamese experts to discuss the issue of and share good practices on the legalisation of same-sex unions. In addition, on 10 May 2013, over 50 members of the National

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59 This section is based on presentations and discussions during 'Session 3: Role of National Human Rights Institutions, ASEAN bodies, Community/Religious Leaders, Law Enforcement Officials, UN Women and Other Relevant Stakeholders in Protecting the Human Rights of LGBTI Persons and Ending Stigma and Discrimination' and 'Session 4: Good Practices in the Region on Addressing, Protecting and Promoting Human Rights of LGBTI Persons' at the *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons* on 1 March 2016.

60 UNDP and USAID, *Being LGBT in Asia: Viet Nam Country Report*. Bangkok (2014), p.17. Available at <http://www.asia-pacific.undp.org/content/rbap/en/home/operations/projects/overview/being-lgbt-in-asia.html>.

Assembly, government officials and the LGBT community took part in a workshop titled "LGBT: Legal Provisions and Opinion of the Insiders" which was organised by the Institute for Legislative Studies.<sup>61</sup>

This dialogue turned into concrete action on 24 September 2013, when the Vietnamese Government issued Decree 110/2013/ND-CP which abolished the imposition of fines for same-sex wedding ceremonies. Previously, same-sex couples were fined between VND100,000 to 500,000 for organising ceremonies to celebrate their union. This decree came into effect on 11 November 2013.

In 2014, as a part of its revision of the *Law on Marriage and Family*, the Vietnamese Government removed the provision within Article 10 which stated that "[m]arriage is forbidden... between people of the same sex"<sup>62</sup> and briefly considered the legal recognition of same-sex relationships, specifically in relation to property rights. However, in the final version of the revised law, this consideration was removed. Hence, the revised *Law on Marriage and Family*, which came into effect on 1 January 2015,<sup>63</sup> makes no mention of same-sex relationships and effectively turns a legal blind eye to same-sex marriage. Therefore, same-sex couples are free to marry without any negative legal, administrative or criminal ramifications. However, their partnerships will not be recognised under the law nor be offered any legal protections. This partial victory has been met with a mixture of celebration and disappointment by the LGBTI community across Viet Nam.<sup>64</sup> Nonetheless, these recent changes are a positive step along the path towards full equality and legal recognition of LGBTI persons. A representative from the Ministry of Justice, speaking at the Regional Consultation, assured the LGBTI community that the Government will continue to gradually move towards greater legal protections for LGBTI persons in Viet Nam.<sup>65</sup>

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61 Institute for Studies of Society, Economy and Environment (iSEE), *Submission on the situations of lesbian, gay, bisexual and transgender ("LGBT") people in Vietnam for the eighteenth session of the United Nations Universal Periodic Review For Vietnam* (Jan-Feb 2014), p. 5. Available at [http://www.upr-info.org/sites/default/files/document/viet\\_nam/session\\_18\\_-\\_january\\_2014/isee\\_upr18\\_vnm\\_e\\_main.pdf](http://www.upr-info.org/sites/default/files/document/viet_nam/session_18_-_january_2014/isee_upr18_vnm_e_main.pdf).

62 Kaleidoscope Human Rights Foundation, *The Rights of Lesbian, Bisexual, Transgender and Intersex (LBTI) Women in Viet Nam Shadow Report for the 61st Session of the Committee on the Elimination of Discrimination against Women* (June 2015), p. 2. Available at [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/VNM/INT\\_CEDAW\\_NGO\\_VNM\\_20790\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/VNM/INT_CEDAW_NGO_VNM_20790_E.pdf).

63 Minh Hung, *Vietnam's marriage bill a step backward: gay-rights activists* (29 May 2014), <http://www.thanhniennews.com/society/vietnams-marriage-bill-a-step-backward-gayrights-activists-26737.html>

64 John Boudreau and Nguyen Dieu Tu Uyen, *Gay Weddings Planned as Vietnam Marriage Law Is Repealed* (8 January 2015), <http://www.bloomberg.com/news/articles/2015-01-07/gay-weddings-planned-as-vietnam-marriage-law-is-repealed>; Dominique Mosbergen, *Vietnam Has Been Praised As A Leader In LGBT Rights. Activists Beg To Differ*, The Huffington Post (18 October 2015), [http://www.huffingtonpost.com.au/entry/lgbt-vietnam\\_us\\_56163a78e4b0e66ad4c68090?section=australia](http://www.huffingtonpost.com.au/entry/lgbt-vietnam_us_56163a78e4b0e66ad4c68090?section=australia)

65 Nguyen Hong Hai (Ministry of Justice, Viet Nam), 'Legal and Policy Changes', presentation at *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons* on 1 March 2016. For example, Mr. Nguyen stated that the Penal Code was currently under revision to recognise rape as a crime when committed by a person of the same sex.

## 2. The Role of the Government and its Ministries

The State and its institutions are the primary duty bearers for upholding the rights of LGBTI persons as enshrined under international human rights law. The government and its ministers play a pivotal role in respecting, protecting and fulfilling the human rights of LGBTI people, and ensuring the inclusion of LGBTI persons in its policies and programs. Hence, it is important that the government takes ownership of its leadership role in creating a progressive, tolerant and equal society in which all of its citizens, include its LGBTI citizens, are able to enjoy their human rights and freedoms.

A good example of the inclusion of LGBTI issues can be found in the work of the Government of Cambodia. Several government ministries have engaged in dialogue with the LGBTI community, including the Ministries of Health, Education, Interior, and Women's Affairs.<sup>66</sup> In particular, the Ministry of Women's Affairs has opened up its consultation process in the development of the second *National Action Plan to Prevent Violence Against Women 2014-2018* (NAPVAW) to include marginalised groups, such as LBT women.<sup>67</sup> The inclusion of LBT organisations in these consultations and the consideration of their submissions in relation to the NAPVAW demonstrates the advancement of LBT rights advocacy in Cambodia. This has resulted in LBT women being included at several points throughout the NAPVAW. For example, LBT women are acknowledged as being more vulnerable to acts of violence against women (VAW)<sup>68</sup> and that different and specific strategies are needed to prevent and respond to the stigma, harassment and discrimination faced by LBT women.<sup>69</sup>

LBT women are also included in the Ministry of Women's Affairs *Strategic Plan for Gender Equality and Women's Empowerment 2014-2018*.<sup>70</sup> The Strategic Plan acknowledges that: LBT girls and young women have higher school absentee and drop-out rates, often due to personal or family difficulties or bullying from peers;<sup>71</sup> stigma, harassment and discrimination is a common experience for LBT women;<sup>72</sup> and policies and programs for gender equality have not yet fully addressed the needs of LBT women.<sup>73</sup> LBT women are also included within some of the strategic objectives and key activities of the Strategic Plan. For example, Strategy 2.1(4) on the promotion of positive images of empowered women and girls includes as a key activity the creation and implementation of an

66 Morn Vanntey, *Program to deal with LGBT issues in works* (18 February 2016), <http://www.phnompenhpost.com/national/program-deal-lgbt-issues-works>.

67 *National Action Plan to Prevent Violence Against Women 2014-2018*. English translation available at [http://countryoffice.unfpa.org/cambodia/drive/NAPVAW\\_2nd\\_13January2014\\_\(unofficial\\_translation\).pdf](http://countryoffice.unfpa.org/cambodia/drive/NAPVAW_2nd_13January2014_(unofficial_translation).pdf).

68 Ibid, p 9. and 12.

69 Ibid, p. 13.

70 *Strategic Plan for Gender Equality and Women's Empowerment 2014-2018*. Available at [https://www.humanitarianresponse.info/system/files/documents/files/KHM\\_0701\\_%20NearyRattanakIV2015-2018.pdf](https://www.humanitarianresponse.info/system/files/documents/files/KHM_0701_%20NearyRattanakIV2015-2018.pdf).

71 Ibid, p. 8.

72 Ibid, p. 11.

73 Ibid, p. 13.

awareness-raising program which includes the right to education for LBT women and girls.<sup>74</sup> Strategy 2.3(2) on reducing VAW also includes the key activity of initiating high-level discussions with relevant stakeholders, including LBT people, to prepare strategies to promote the rights of and end discrimination against LBT people in schools, the work place, in communities and families.<sup>75</sup>

Other ministries have also been active on and responsive to LGBTI issues. For example, in December 2015, the Ministry of Information issued a statement to media outlets across Cambodia calling upon presenters and artists to stop mocking or ridiculing members of the LGBTI community for entertainment. The letter stated that, “[t]his kind of commentary and/or performance is an act of looking down on LGBT people. It degrades the honor and rights of LGBT people who are also protected by the State’s law as well as other citizens.” The letter cited the Constitution and highlighted the rights of LGBTI people to be protected from discrimination.<sup>76</sup> The Ministry of Information has also been working with LGBTI organisations to create a regular radio program to raise awareness of LGBTI rights and to provide a space for community members to discuss issues such as the legal recognition of same sex marriage.<sup>77</sup>

In addition, the Ministry of Education, Youth and Sports is supporting LGBTI organisations to implement awareness raising campaigns against SOGI-related bullying in schools, particularly in secondary schools, and to discipline those who discriminate against or bully LGBTI students. The Ministry of Labour is also working in collaboration with LGBTI organisations to implement awareness raising activities to call on employers to respect the rights of sexual minorities and to adhere to labour laws and other relevant laws that protect and promote the rights of LGBTI persons. LGBTI organisations have also lobbied the Ministry of Labour to explain the importance of LGBT rights in the workplace, to encourage managers to build SOGI principles into wider activities with employees and employee associations, and to call on unions to protect the rights of LGBTI workers.

Furthermore, a conscious effort has been made in the past few years to recognise and make distinctions between MSM and transgender persons in HIV prevention programming. MSM and transgender persons are now recognised in the HIV sector as separate groups with distinct needs and issues. The *National Strategic Plan for AIDS (2011–2015)* has different target indicators for MSM and transgender people. In addition, several NGOs alongside Maternal and Child Health Services and Family Planning and Sexual Reproductive Health clinics now support freestanding MSM- and transgender-specific services or have integrated them into their existing facilities.<sup>78</sup>

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74 Ibid, p. 34.

75 Ibid, p.40.

76 Tin Sokhavuth, *Ministry: Stop Mocking LGBT Community*, Khmer Times (15 December 2015), <http://www.khmertimeskh.com/news/18712/ministry--stop-mocking-lgbt-community/>.

77 Vanntey, above n 66.

78 Inala Fathimath (UN Women), email correspondence dated 9 March 2016.



Hence, the example of Cambodia demonstrates that positive engagement by the Government and its ministries with the LGBTI community is important for the proper formulation of its policies and programs and for respecting, protecting and fulfilling the human rights of LGBTI people by the State.

### 3. Creating Change through the Judicial System

The judicial system can be an important institution for protecting the LGBTI community. Progressive rulings made by higher courts cannot only clarify and enforce the rights of LGBTI people but can also encourage changes in other State and social institutions. The judicial system can offer LGBTI activists an avenue through which to challenge, change and overturn discriminatory legislation or practices, and may offer individuals who have suffered human rights violation a means through which to seek remedy and redress.

The successful legal action brought by Blue Diamond Society (BDS),<sup>79</sup> a grassroots LGBTI organisation in Nepal, demonstrates the power of civil society pursuing action through the judicial system to protect and advance the rights of the LGBTI community. In April 2007, Sunil Babu Pant (from BDS) alongside three other organisations<sup>80</sup> filed a public interest litigation suit on behalf of the LGBTI people of Nepal. The petitioners sought legal recognition of transgender persons as a third gender, legal prohibition of discrimination on the basis of sexual orientation and gender identity, and reparations to LGBTI persons who had been victims of violence or discrimination by the State.<sup>81</sup> At the time of the filing, transgender persons were frequently denied citizenship cards if they did not wish to register as male or female, and were frequently subjected to police violence and harassment due to their gender identity.<sup>82</sup>

In December 2007, the Supreme Court of Nepal issued its landmark decision in *Sunil Babu Pant and Others v Government of Nepal* which changed the landscape of LGBTI rights in Nepal.<sup>83</sup> Drawing upon the Yogyakarta Principles, reports of the Special Procedures of the UN Human Rights Council, international human rights treaties such as the ICCPR and ICESCR, and the Nepali Constitution, the Court held that all Nepali citizens “should be allowed to enjoy the rights of their own identity as provided by the national laws, the Constitution and international human rights instruments. It is the responsibility of the State to create the appropriate environment and make legal provisions accordingly

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79 Blue Diamond Society, <http://www.bds.org.np/>.

80 These organisations were Mitini Nepal, Cruse AIDS Nepal and Parichaya Nepal.

81 International Commission of Jurists, *Sunil Babu Pant and Others v. Nepal Government and Others, Supreme Court of Nepal (21 December 2007)*, <http://www.icj.org/sogicasebook/sunil-babu-pant-and-others-v-nepal-government-and-others-supreme-court-of-nepal-21-december-2007/>.

82 Ibid.

83 English translation of decision available at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/07/Sunil-Babu-Pant-and-Others-v.-Nepal-Government-and-Others-Supreme-Court-of-Nepal.pdf>.

for the enjoyment of such rights. It cannot be construed that only 'men' and 'women' can enjoy such rights and other people cannot enjoy it because they have a different gender identity and sexual orientation."<sup>84</sup>

The Court dismissed notions that LGBTI persons were "sexual perverts" or had "emotional and psychological disorder[s]", and drew attention to the laws and actions of the State that had contributed to the discrimination and social prejudice faced by LGBTI persons, such as the criminalisation of same-sex marriage as "unnatural coitus".<sup>85</sup>

The Court ordered the Government of Nepal to ensure that the rights of persons with different gender identities and sexual orientations were upheld, including through the amendment or enactment of necessary laws, and held that the new Constitution that was being drafted at the time should provide guarantees of non-discrimination on the grounds of gender identity and sexual orientation. The Court also ordered the Government to establish a committee to consider the issue of same-sex marriage.<sup>86</sup>

This landmark decision by the Supreme Court has had far-reaching effects across many levels of Nepali society. As a result of the decision, citizenship cards were revised to include the category of 'other', alongside 'male' and 'female', to provide an additional option for the recognition of the gender identity of transgender or intersex persons.<sup>87</sup> In addition, the declaration by the Court that stigmatisation of LGBTI persons as perverted or unnatural were "old notions" that had "no value" in a modern welfare State paved the way for changes within the government and broader society. For example, since the decision was handed down, Blue Diamond Society has reported a significant decrease in harassment and abuse of transgender people by police officers.<sup>88</sup> Government attitudes and policies have also changed. The major political parties now include LGBTI issues in their political agendas and the Nepali Government boasts the first openly gay Member of Parliament in an Asian country.<sup>89</sup> The Ministries of Education and Youth also now include LGBTI issues within their policies, and transgender people are counted in the national census as their identified gender.<sup>90</sup>

This recognition and acceptance at the State level has trickled down to the community level and created a social environment that is more supportive of LGBTI people. Consequently, the LGBTI community and its support structures have grown as more

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84 Translation published in National Judicial Academy Law Journal, Issue 2 (2008), p.283-284. Available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/07/Sunil-Babu-Pant-and-Others-v.-Nepal-Government-and-Others-Supreme-Court-of-Nepal.pdf>.

85 International Commission of Jurists, above n 81.

86 Ibid.

87 Ibid.

88 Shrestha, above n 45.

89 ILGA, *Interview with Sunil Pant, Member of Parliament of Nepal* (13 February 2010), <http://ilga.org/interview-with-sunil-pant-member-of-parliament-of-nepal/>.

90 Shrestha, above n 45.



people are able to 'come out' and live publically as LGBTI persons.<sup>91</sup> The Supreme Court of Nepal has also continued to support LGBTI rights. For example, in April 2013, the Supreme Court issued a ruling in support of a woman in a same-sex relationship, stating that, "[i]ndividuals can decide to choose their ways of living either separately or in partnership together with homosexuals or heterosexuals – with or without solemnizing marriage"<sup>92</sup>, and in January 2015, the Supreme Court released a judgement ordering the Government to issue passports with the option of three genders.<sup>93</sup> Hence, the petition filed by Blue Diamond Society, at a point in time when LGBTI people were highly marginalised, has resulted in significant changes across society through the support of a progressive judicial system.

## 4. Working with Law Enforcement

Engaging with the law enforcement system of a State is important for ensuring that the rights of LGBTI people are respected and protected. In States with adequate legal protections for LGBTI persons, working with law enforcement officers and staff to ensure that they themselves uphold the law, and that they are committed to upholding and enforcing these laws in their work with the community, is essential for translating legal protections on paper into the protection of LGBTI persons in real life.

A good example of engaging law enforcement to uphold the rights of the LGBTI community is the work of Provedoria dos Direitos Humanos e Justiça (PDHJ), the national human rights institution of the Democratic Republic of Timor-Leste. The PDHJ have identified that the police force is an important institution to engage in their work to further human rights. This is particularly the case in light of the high number complaints of human rights violations committed by police officers and the low level of knowledge of human rights within the police force.<sup>94</sup> Knowledge of the rights of LGBTI people is particularly low among police officers.<sup>95</sup>

The PDHJ have engaged the National Police of Timor-Leste to participate in the training of their new police officer recruits. The PDHJ, in collaboration with an LGBTI organisation named CODIVA (Coalition for Diversity and Action), have signed a Memorandum of Understanding (MoU) with the National Police Force to train police officers and community leaders throughout the country. This includes training on a range of human

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91 Ibid.

92 *Rajani Shah v. National Women Commission et al.*, Supreme Court of Nepal, April 11, 2013, Writ No. 069-WH-0030, quoted in UNDP and USAID, *Being LGBT in Asia: Nepal Country Report*. Bangkok (2014), p.30. Available at <http://www.asia-pacific.undp.org/content/rbap/en/home/operations/projects/overview/being-lgbt-in-asia.html>.

93 Astraea Lesbian Foundation for Justice, *Bridges to Justice: Case Study of LGBTI Rights in Nepal*, New York (2015), p. 3. Available at <http://www.astraeafoundation.org/uploads/files/Astraea%20Nepal%20Case%20Study.pdf>.

94 Raoul Wallenberg Institute, *Developing a human rights manual for police officers* (21 November 2014), <http://rwi.lu.se/2014/11/developing-human-rights-manual-police-officers/>.

95 Comment made by participant at the *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons* on 1 March 2016.

rights issues pertinent to the work of the police force, such as LGBTI rights and how to work respectfully with LGBTI persons. The PDHJ has also developed a human rights manual for the police force which was launched on International Human Rights Day in 2014. This manual includes information on how to engage and work with LGBTI people.<sup>96</sup> Hence, working proactively with the law enforcement system of the State is an important strategy for building a police culture this is aware of, and committed to, protecting the rights of LGBTI persons.

## 5. The Support of National Human Rights Institutions

National human rights institutions can be important bodies for supporting the LGBTI community. As, ideally, independent bodies mandated to monitor the compliance of the State and its institutions with its human rights obligations, NHRIs can be strong supporters and advocates for the protection of LGBTI rights. NHRIs can play an important role in ensuring the inclusion of LGBTI persons in government consultations, mediate complaints of discrimination against LGBTI persons, support the capacity building of LGBTI organisations and activists, provide training to public and private institutions to work more effectively and inclusively with LGBTI people, and take the concerns of the LGBTI community within their countries to regional and international forums.

The Australian Human Rights Commission (AHRC) provides a good example of how NHRIs can effectively engage with the issue of LGBTI rights. The AHRC has worked to promote LGBTI rights for over a decade and its work has contributed to the removal of discrimination against LGBTI people from approximately 100 federal laws.<sup>97</sup> Recently, the AHRC has undertaken a national consultation to give communities an opportunity to voice their opinions on SOGII (Sexual Orientation, Gender Identity and Intersex) issues, to develop a better understanding of the challenges faced by the LGBTI community, and to inform the Commission's future work on SOGII rights. The Human Rights Commissioner and AHRC staff travelled across Australia, including to rural and remote areas, to conduct community consultations with key stakeholders, including LGBTI groups, organisations and individuals, as well as allied professionals, service providers and organisations. The AHRC held more than 37 meetings with over 78 organisations to inform the consultation.<sup>98</sup> Travelling to rural and remote areas of Australia enabled the Commission to hear about the specific issues faced by LGBTI people living remotely and to reach out to individuals and organisations that the Commission had not worked with

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96 Moises Nazario Pereira (Provedoria dos Direitos Humanos e Justiça), email correspondence dated 8 March 2016.

97 Tim Wilson (Human Rights Commissioner), *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights 2015*, Message from the Commissioner (2015). Available at: <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/resilient-individuals-sexual>.

98 Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights 2015* (2015), pp. 6-9. Available at <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/resilient-individuals-sexual>.

before.<sup>99</sup> In addition to face-to-face meetings, the National Consultation included the release of a discussion paper online to which written submissions from the community were sought. This was supplemented by an online survey. The AHRC received a total of 47 written submissions and 1518 people completed the online survey.<sup>100</sup>

Through the National Consultation, the AHRC heard about the issues of discrimination faced by the LGBTI community. This included: discrimination in the delivery of government services, in particular, health and education; discrimination in employment and sport; and barriers in regard to relationship recognition and the protection of their families and children. The Commission also heard about the specific challenges faced by transgender and gender diverse people, intersex people, and Aboriginal and Torres Strait Islanders who are LGBTI.<sup>101</sup> The outcomes of the National Consultation will be used to inform the AHRC's work on SOGII issues for the next four years.<sup>102</sup>

The 2015 National Consultation is the fifth major project on SOGII rights that the AHRC has undertaken. Its previous work includes: a national inquiry in 2007 into discrimination against people in same-sex relationships in federal law, which contributed to the amendment of 84 discriminatory laws; a consultation in 2008 with trans, gender diverse and intersex people that identified challenges in the recognition of gender identity, to which the Government responded through the release of the *Australian Government Guidelines on the Recognition of Sex and Gender*; consultations in 2010 on protection from discrimination on the basis of SOGII, which informed the introduction of the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status)* Act which expanded protections for LGBTI people; and a position paper on marriage equality in 2012.

The work of the AHRC provides an example of good practice by an NHRI in promoting the human rights of the LGBTI community. Further examples of good practice by NHRIs may be found in the *Regional Report: Capacity of National Human Rights Institutions to Address Human Rights in Relation to Sexual Orientation, Gender Identity and HIV*, which is a joint publication by UNDP, the International Development Law Organization (IDLO) and the Asia Pacific Forum of National Human Rights Institutions (APF). This publication documents progressive initiatives and good practices of NHRIs and other human rights advocacy bodies in Bangladesh, India, Indonesia, Nepal, the Philippines, Sri Lanka and Timor-Leste on SOGI rights.<sup>103</sup>

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99 Laura Sweeney (Australian Human Rights Commission), 'NHRIs in Monitoring State Accountability', presentation at *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons* on 1 March 2016.

100 Australian Human Rights Commission, above n 98, pp. 6-9.

101 Ibid, p. 2.

102 Ibid, p.6.

103 United Nations Development Programme (UNDP) and the International Development Law Organization (IDLO), *Regional Report: Capacity of National Human Rights Institutions to Address Human Rights in Relation to Sexual Orientation, Gender Identity and HIV* (2013). Available at [http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic\\_governance/hiv\\_aids/regional-report--the-capacity-of-national-human-rights-instituti.html](http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/regional-report--the-capacity-of-national-human-rights-instituti.html).

## 6. The Power of Youth Advocacy

The youth of South East Asia hold much potential and power for changing the future of the region. This generational change can bring about many positive advances in support of LGBTI rights. Whether engaging young people through the education system, local community, cultural or social events, entertainment, media, or online, young LGBTI advocates have the opportunity to shape the attitudes, beliefs and convictions of their peers to ensure that the next generation will be inclusive of LGBTI people and are committed to upholding the human rights of all citizens within their society.

One youth organisation that is working towards a positive and inclusive future is CamASEAN, a youth NGO in Cambodia, which has set out to combat discrimination against diverse minority groups, including LGBTI people. CamASEAN's strategy includes a number of approaches, such as strengthening the capacity of their own members, working with diverse young people and the broader youth population, engaging Cambodian society more generally, and reaching out across the ASEAN region. The core components of CamASEAN's work includes youth organising, raising awareness of human rights, documenting human rights violations, and undertaking social enterprises and special projects.<sup>104</sup>

Among CamASEAN's innovative projects is the CamASEAN LGBT legal support (CLGBT) project. This project began through the observation of CamASEAN members and other university law students that, within Cambodian society, there was little support within the legal profession for LGBTI rights. Believing that legal reform must happen from the bottom-up, the CLGBT project decided to engage students studying law to raise awareness about LGBTI issues and to ensure that the next generation of lawyers were supportive of LGBTI rights. Their strategies have included: meeting and training law students and legal networks/groups; undertaking legal analysis of Cambodian law and international law, including applying or interpreting the law to uphold the rights of LGBTI people; producing resource materials on LGBTI human rights; creating an online community, including through Facebook, Twitter and blogs; and documenting cases of the engagement of LGBTI persons with the legal system and providing legal support when possible.<sup>105</sup> The law students that CamASEAN have successfully recruited to join their advocacy work will contribute to analysing and identifying gaps in laws and policies, documenting human rights violations experienced by marginalised groups, lobbying the government and other stakeholders, and providing capacity building for marginalised groups, lawyers, journalists, and NGOs working on gender, youth and law issues.<sup>106</sup>

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104 CamASEAN's Youth Future, *Who We Are*, <http://camasean.org/who-we-are/>.

105 CamASEAN's Youth Future, *Cambodia LGBT Legal Support (CLGBT)*, <http://camasean.org/what-we-do/cambodia-lgbt-legal-support/>.

106 Srun Sron (CamASEAN), email correspondence dated 8 March 2016.



CamASEAN also undertake a number of other projects and initiatives including: the CamASEAN Women and Choices project which advocates for choices for young women in regard to their sexual and reproductive health, including LBT women; the Rainbow Cambodia Advocate Team (CAT) which focuses on poverty reduction among young people, especially LGBTI students, through projects such as the Rainbow CAT café and training opportunities; and the ASEAN and Human Rights Project which aims to share the importance of ASEAN integration among Cambodia youth and to share the importance of the human rights of young people with the ASEAN community.<sup>107</sup> Hence, CamASEAN have demonstrated the myriad of ways in which young people can work towards creating a more equal and tolerant society and the important role that young people have in shaping their country's future.

## 7. Strengthening Rights through Working Regionally

South East Asia is a diverse and dynamic region. LGBTI activists and organisations across the region have much to gain from working together, sharing good practices, and learning from one another's successes and challenges. More progressive States can encourage change and demonstrate leadership in the region on LGBTI rights, and LGBTI activists and communities from more repressive States may be able to find support and encouragement from across the border. There may also be opportunities to advance LGBTI rights that will require a uniquely regionally and collaborative approach, such as opportunities presented through engaging in regional mechanism or bodies like the Association of Southeast Asian Nations (ASEAN).

The opportunity for positive change through ASEAN was recognised by LGBTIQ activists from across eight countries (Burma, Cambodia, Indonesia, Malaysia, Philippines, Singapore, Thailand and Viet Nam) when they came together during the 2011 ASEAN Civil Society Conference of the ASEAN People's Forum in Jakarta, Indonesia, to form the ASEAN SOGIE Caucus. The ASEAN SOGIE Caucus works to: raise awareness about LGBTIQ rights by mainstreaming and integrating SOGIE issues into ASEAN mechanisms; lobby ASEAN governments at national and regional levels; build connections and collaboration between LGBTIQ groups and national and regional human rights and social justice groups; and advocate for the amendment of discriminatory laws and the enactment of legal protections for LGTBIQ people.<sup>108</sup> Members of the ASEAN SOGIE Caucus have been actively involved in monitoring developments in ASEAN mechanisms, such as the ASEAN Human Rights Declaration and the Declarations on the Elimination of Violence Against Women and Children, to advocate for the inclusion of LGTBIQ people.<sup>109</sup> For example, the ASEAN SOGIE Caucus launched a social media campaign titled "We are #ASEANtoo" in the lead up to the 2014 ASEAN People's Forum

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107 CamASEAN, above n 104.

108 The ASEAN SOGIE Caucus, <http://aseansogiecawcus.org/about>.

109 Ibid, and Outright International, *ASEAN SOGIE Caucus Launches Regional Campaign Criticizing Declarations on Women and Children*, <https://www.outrightinternational.org/content/asean-sogie-caucus-launches-regional-campaign-criticizing-declarations-women-and-children>.



in Myanmar. The campaign encouraged people to demonstrate their support for the inclusion of issues around sexual orientation and gender identity by sending tweets and Instagrams using the hashtag #ASEANtoo.<sup>110</sup> The use of online platforms has been an important strategy for LGBTI activists to connect, mobilise and advocate for LGBTI on a regional level. Hence, the work of the ASEAN SOGIE Caucus demonstrates the important role of regional collaboration for advancing LGBTI rights in South East Asia.

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110 Outright International, The ASEAN SOGIE Caucus affirms 'We are #ASEANTOO' & calls on States and People to Support inclusion of SOGIE in ASEAN, <https://www.outrightinternational.org/content/asean-sogie-caucus-affirms-%E2%80%98we-are-aseantoo%E2%80%99-calls-states-and-people-support-inclusion-sogie>.



## **SECTION 4: Entry Points for Advancing Rights**

South East Asia is a developing and dynamic region with many opportunities for advancing the rights of LGBTI persons. This potential for progress and change was evident at the Regional Conference where participants from across the region discussed the numerous opportunities and entry points for furthering LGBTI rights. These discussions are captured in this section. Discussions on the issue made it clear that it is important to work at all levels – local, national, regional and international – to promote the acceptance and inclusion of LGBTI people. This section may offer some ideas or inspiration for advocates working on LGBTI rights.<sup>111</sup>

## 1. UN Human Rights Mechanisms

UN human rights mechanisms offer a number of opportunities for advancing LGBTI rights that have not yet been fully utilised. For example, the State reporting processes to UN treaty bodies provide an opportunity for the LGBTI community to voice their concerns about the State's shortcomings in protecting their human rights. In the process of the State fulfilling its reporting obligations, LGBTI activists should encourage their States to not only consider the provisions contained within the relevant treaties but to also report against the General Recommendations or Comments issued by UN treaty bodies and to take into consideration the Yogyakarta principles.<sup>112</sup>

The CEDAW Committee, in particular, may be a good entry point for LGBTI advocates. Addressing LGBTI issues by the CEDAW Committee has been relatively *ad hoc* to date and has depended on the ability of LGBTI activists to bring their concerns to the attention of the CEDAW Committee as well as the responsiveness of Committee members to these issues. Potential still remains for LGBTI activists to better utilise these procedures by, for example: advocating for the inclusion of LGBTI issues within the State's report; advocating for the inclusion of LGBTI issues within the main NGO shadow reports; submitting an independent shadow report that focuses specifically on LGBTI issues; ensuring that the NGO delegation to Geneva is trained in and prioritises LGBTI issues; or sending a LGBTI representative as part of the NGO delegation to Geneva. LGBTI activists may draw on the support offered by other feminist NGOs, such as the International Women's Rights Action Watch Asia Pacific, to assist in preparing their shadow reports and training their delegates.<sup>113</sup>

LGBTI activists may also consider engaging other UN treaty bodies, such as the Human Rights Committee, the Committee on Economic, Cultural and Social Rights, or the Committee Against Torture. For example, LGBTI activists may draw the attention of the

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111 This section is based on presentations and discussions during 'Session 5: Opportunities, Entry Points and Approaches for Advancing Rights' at the *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons* on 1 March 2016.

112 Comment made by participant at the *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons* on 1 March 2016.

113 International Women's Rights Action Watch Asia Pacific, <http://www.iwraw-ap.org/>.

Committee Against Torture to the torture or cruel, inhuman, or degrading treatment of LGBTI persons, or raise their concerns with the Human Rights Committee in cases where sexual orientation or gender identity have contributed to sentencing individuals to the death penalty. LGBTI activists can also engage the UN treaty bodies in regard to their other mandated functions, such as UN treaty bodies that also have Communications procedures or Inquiry procedures. LGBTI activists may submit individual complaints of human rights violations to the relevant UN treaty body for resolution or submit suggestions of issues that deserve independent investigation.

The human rights mechanisms of the Human Rights Council may also provide opportunities for activists to further LGBTI rights. For example, LGBTI activists may engage with their State's Universal Periodic Review (UPR), again through submitting shadow reports or being a part of NGO delegations, and may participate alongside other civil society organisations in monitoring the State's compliance with the recommendations from the UPR that it has chosen to accept. LGBTI activists may also submit their concerns to other mechanisms, such as the Special Procedures or the Special Rapporteurs, and to engage with mandate holders to raise concerns about LGBTI rights, particularly if the mandate holder is conducting a country visit.

## 2. Working with United Nations Agencies and Programmes

Working with UN agencies and programmes is an opportunity to both strengthen the advocacy of LGBTI activists and the UN's commitment to LGBTI rights. A number of UN agencies already work with the LGBTI community, such as UN Women, UNDP and UNAIDS, as outlined in Section I of this report. The current work on LGBTI rights by these UN agencies opens up opportunities for the LGBTI community to participate in and provide feedback to the UN on how to improve its work in this area.

The United Nations has been mandated by its Member States to promote human rights within the UN Charter, and this includes the human rights of LGBTI people. As an organisation of high political status and significant political reach, the UN can create opportunities for LGBTI organisations and activists which may not be possible for them to access otherwise. For example, an important role of UN agencies may be to bring together different stakeholders to discuss LGBTI rights. The UN may create the space for grassroots activists and community organisations to access decision-makers and powerholders, or provide them with platforms upon which to speak where their voices are more likely to be heard. The UN may also hold knowledge and experience on human rights and advocacy that may be helpful for the LGBTI community and can share this knowledge and experience through capacity building, training, or producing knowledge products for the community. Limited resources are also a problem faced by many LGBTI organisations and the UN may assist through providing resources or working with organisations to support them to secure other sources of funding.

In return, the UN will also benefit from their work with LGBTI activists and organisations. For example, the UN has the opportunity to deepen its knowledge of the issues faced by LGBTI persons and the solutions proposed by the LGBTI community. The UN stands to benefit from undertaking capacity building of its own staff on the issue of LGBTI rights. This may include improving its understanding on how to effectively mainstream LGBTI issues, as well as how to strengthen programs and policies that specifically address the needs of LGBTI people. Hence, LGBTI organisations and UN agencies working together can be a mutually beneficial relationship.

### 3. Regional Opportunities

The increasing integration of South East Asia, and the Asia Pacific region more broadly, offers a number of strategic entry points for activists to strengthen LGBTI rights across the region. LGBTI activists have already organised around and engaged in advocacy towards ASEAN and its various bodies and forums, such as the ASEAN People's Forum, ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). LGBTI activists have also engaged in advocacy for the inclusion of LGBTI issues in developments within ASEAN, such as the ASEAN Human Rights Declaration and the Declarations on the Elimination of Violence against Women and Children. Advocacy opportunities will continue to arise for LGBTI activists, such as the upcoming 21<sup>st</sup> AICHR Meeting scheduled for 4 to 8 April,<sup>114</sup> the 28<sup>th</sup> and 29<sup>th</sup> ASEAN Summit scheduled for 6 to 8 September in Vientiane,<sup>115</sup> the 13<sup>th</sup> ACWC Meeting scheduled for October 2016 in Singapore,<sup>116</sup> and the ASEAN Young Leaders Summit and ASEAN Leaders' Meeting with Representative of ASEAN Youth.<sup>117</sup> Engagement strategies may include: advocating for the inclusion or recognition of LGBTI issues on both the agenda of States and at NGO side events; engagement with the appointment process of State Representatives; working with States with more progressive positions on LGBTI issues, such as Viet Nam and Cambodia, to advocate for the inclusion of SOGI within ASEAN; and growing the ASEAN SOGIE Caucus.

There are also a number other opportunities for advocacy on LGBTI issues in the region beyond ASEAN. For example, ESCAP Resolutions 66/10 and 67/9 on HIV and AIDS recognise the impact of stigma and discrimination on HIV, health and human dignity and call for the removal of legal and political barriers to universal access to HIV services,

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114 *ASEAN Notional Calendar 2016*, [http://www.asean.org/storage/2016/01/6Jan/ASEAN-Notional-Calendar-2016-\(ENG\)-as-of-5-Jan-\(15-00\).pdf](http://www.asean.org/storage/2016/01/6Jan/ASEAN-Notional-Calendar-2016-(ENG)-as-of-5-Jan-(15-00).pdf).

115 *Ibid.*

116 *Press Release of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)* (22 February 2016), <http://www.asean.org/press-release-of-the-asean-commission-on-the-promotion-and-protection-of-the-rights-of-women-and-children-acwc-2/>.

117 Scheduled dates are to be confirmed. See above n 114.



particularly in relation to key affected populations (including transgender people).<sup>118</sup> These resolutions were followed by the 2012 ESCAP *Regional Framework for Action on AIDS to 2015* which included a commitment by ESCAP Members to conduct national reviews and multi-sectoral consultations on legal and policy barriers to universal access to HIV services. The majority of the reviews and consultations that have since been conducted pursuant to this commitment have given significant attention to issues of discrimination on the grounds of sexual orientation and gender identity and how these should be addressed. The 2015 ESCAP *Regional Framework for Action on HIV Beyond 2015* includes the commitment to continue reviews and consultations on legal and policy barriers. This may be an effective entry point for stakeholders in ESCAP Member Countries (including all ASEAN countries) to propose a review and/or participatory consultation on legal and policy barriers that present barriers to access HIV services for LGBTI persons.<sup>119</sup>

Furthermore, LGBTI activists may engage in broader Asia-Pacific regional events, such as the upcoming Asia Pacific Forum on Sustainable Development scheduled for 4 to 8 April 2016. Opportunities also exist for building the LGBTI movement, such as the 28<sup>th</sup> International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) World Conference that will be taking place in Bangkok, Thailand, from 28 November to 2 December 2016.<sup>120</sup> The ILGA Conference will be a gathering of over 500 LGBTI activists and representatives from civil organisations around the world, as well as public officials, legislators, academics, directors of cooperative institutions, and UN representatives.<sup>121</sup> The conference presents a good opportunity to build alliances, partnerships and networks, share good practices, strengthen advocacy and campaigning skills, strategise and plan, and grow connections across the global LGBTI community. It also represents an opportunity for the more marginalised voices within the community, such as LGBTI persons, to organise together and raise awareness to the broader movement about the specific issues that they face.

## 4. Working with different Government Ministries

LGBTI citizens have the right to lay claims on their government and its ministries to uphold their human rights and to be inclusive in their policies and programs. LGBTI activists may consider engaging with different ministries on various issues which are a concern to the LGBTI community. For example, the Ministry of Justice or equivalent

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118 ESCAP Resolutions 66/10 and 67/9. Available at <http://www.unescap.org/resources/escap-resolution-6610-regional-call-action-achieve-universal-access-hiv-prevention> and [http://www.unaids.org/sites/default/files/en/media/unaids/contentassets/documents/document/2011/06/20110601\\_ESCAP\\_Resolution\\_67\\_9.pdf](http://www.unaids.org/sites/default/files/en/media/unaids/contentassets/documents/document/2011/06/20110601_ESCAP_Resolution_67_9.pdf).

119 Comment by Brianna Harrison (UNAIDS), dated 21 March 2016.

120 International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), *Conferences*, <http://ilga.org/what-we-do/conferences/>.

121 Eile Magazine, *ILGA Announces Dates For Its 2016 World Conference* (21 January 21 2016), <http://eile.ie/2016/01/21/ilga-announces-dates-for-its-2016-world-conference/>.

may be engaged in regard to the treatment of LGBTI persons by law enforcement, the judicial system or correctional facilities. LGBTI activists may encourage the Ministry of Justice to set standards for the dignified treatment of LGBTI persons, such as detaining them in the correct ward for their gender identity and prohibiting harassment or humiliation based on their sexual orientation or gender identity. Similarly, the Ministry of Health or equivalent may be engaged to raise awareness of the particular health concerns of LGBTI persons and to ensure training for healthcare professionals to be able to provide adequate healthcare for and work respectfully with LGBTI persons. The Ministry of Education or equivalent may be engaged to address the challenges that young LGBTI people face in schools, such as harassment, bullying and ostracism by peers and teachers. This may include designing a curriculum which addresses homophobia and transphobia, and includes positive role modelling for LGBTI youth. The Ministry of Women's Affairs or equivalent may also be engaged to ensure that all women, including LGBTI women, are included in its policies and programs.

LGBTI communities should work with government ministries to ensure that both specific policies and programs are implemented to address the needs of LGBTI persons and that LGBTI issues are mainstreamed throughout all of the government's policies and programs. State authorities, representatives and civil servants should also be encouraged to undertake training and capacity building on LGBTI rights and on the principles of equality and non-discrimination that should be a part of the workplace culture of the public service.

## 5. Ensuring Protection under the Law

Many States across the region continue to have laws that discriminate against LGBTI persons or fail to legally protect the rights of LGBTI persons. For example, 18 countries across the Asia Pacific continue to criminalise same-sex relationships and a number of States have additional religious laws which criminalise gender non-conformity, such as wearing clothes designated for the opposite sex.<sup>122</sup> Repealing laws that criminalise or impose civil penalties LGBTI people or aspects of their behaviour or expression is fundamental to upholding the human rights of LGBTI people. This is a necessary battle for the LGBTI community and their supporters. A number of different approaches may be taken to amend the law, such as changing the opinions of law makers or those who influence them, catalysing a change to legislation or its application through the judicial system,<sup>123</sup> bringing the discriminatory laws to the attention international human rights bodies,<sup>124</sup> or galvanising the support of the community and fellow citizens.

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122 Roberta Clarke (Regional Director and Representative in Thailand, UN Women), 'Welcoming Remarks' during the *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons* on 29 February 2016.

123 This can be seen in the example of Nepal, as discussed in Section III of this report.

124 This can be seen in the example of Tasmania, Australia, which changed its sodomy laws after the Human Rights Committee released its decision in *Toonen v Australia* (Communication No. 488/1992).

It is also important to enact national laws to protect the human rights of LGBTI persons. This may involve, for example, the inclusion of LGBTI persons in current laws that offer protection to citizens, such as laws on the protection and recognition of relationships (e.g. marriage laws); anti-discrimination, anti-harassment or anti-hate laws; and the recognition of same sex perpetrators within laws prohibiting rape and family violence. Ensuring the non-discriminatory implementation of the law is also important for the realisation of legal protections for LGBTI people. Furthermore, the legal protection of LGBTI persons may also include the enactment of specific laws recognising the additional barriers that LGBTI persons face, such as laws recognising a change in gender identity and protecting the bodily autonomy of intersex children. Hence, ensuring adequate protection under the law is another area which is important for LGBTI activists to engage in to advance LGBTI rights.

## 6. Building Supportive Law Enforcement

Working to ensure that the system of law enforcement within the State is supportive of LGBTI people is essential for the LGBTI community to be able to enjoy their rights and to be protected from violence and abuse. Hence, working with law enforcement is another important entry point for LGBTI activists. Law enforcement officers and staff can be strong allies for the LGBTI community but require training and support to understand LGBTI issues and rights. This training should be undertaken within a broader framework of human rights and dignified treatment for all persons who encounter the law enforcement and correctional systems. LGBTI organisations may consider working in collaboration with other institutions, such as their local NHRI, to facilitate access to law enforcement officials and to develop human rights based training and resource materials.

LGBTI organisations may also work with law enforcement officials to develop good practice standards, guidelines, or codes of conduct for police officers and correctional staff when engaging with LGBTI people. These standards and codes of conduct can contribute to creating a culture of understanding and support for LGBTI rights. Other initiatives, such as having a LGBTI focal point, liaison officer, dedicated team or desk, may also be important. The benefits of a dedicated focal point for LGBTI issues is that this may encourage greater engagement and trust by the LGBTI community and build a better relationship between the community and the police.

## 7. Strengthening National Human Rights Institutions

National human rights institutions are an important and, perhaps, an easier and more receptive entry point for working on LGBTI rights. In States which do not have NHRIs, LGBTI organisations may consider joining advocates calling for the establishment of an NHRI. For States in which an NHRI exists, LGBTI activists may support strengthening the

work and mandate of their NHRI, including its work on LGBTI issues. LGBTI organisations may engage with NHRIs in different ways to advance LGBTI rights. For example, LGBTI organisations may provide capacity building for NHRI staff on issues faced by the LGBTI community, and the NHRI can provide capacity building for the LGBTI community on human rights, advocacy, and the role of the NHRI in protecting human rights. If the mandate of the NHRI allows for complaint handling, investigations, or court case interventions, LGBTI individuals or organisations may submit their cases of human rights violation to the NHRI for resolution or intervention. These complaints may then be used by the NHRI to inform its policy or program development, particularly if certain types of complaints are lodged repeatedly which may indicate a widespread or systemic violation. LGBTI activists may also work with NHRIs to encourage the establishment of a LGBTI Commissioner, focal person, team or desk which may be dedicated to LGBTI issues and be a contact point for the LGBTI community. Lastly, LGBTI organisations can work with NHRIs to ensure that LGBTI issues are mainstreamed throughout the broader human rights work of the NHRI.

The greater reach and status of NHRIs may also work for the benefit of LGBTI activists and organisations and support them to amplify their voices beyond national boundaries. For example, if the NHRI is coordinating the development of the NGO shadow report for UN human rights reporting processes, then the NHRI can work with LGBTI organisations to facilitate the inclusion of LGBTI issues in the shadow report. The NHRI may also be able to bring the concerns of their LGBTI community to regional or international forums, such as the South East Asia NHRI Forum and the Asia-Pacific Forum of National Human Rights Institutions.

## 8. Economic Empowerment and the Private Sector

Economic empowerment and financial security are necessary for LGBTI people to be able to enjoy other human rights and to have the security to live openly as a LGBTI person. Discrimination against LGBTI persons continues to be a significant problem within the workforce, especially for individuals who visibly transgress heteronormative gender. As part of the *Being LGBTI in Asia* programme, the challenges faced by LGBTI persons in the workplace, key areas to address, and examples of good practice have recently been explored through three national dialogues convened by UNDP, the ILO and the Economist Events.<sup>125</sup>

Working with the private sector can be an important strategy for advancing the rights of the LGBTI community. There are numerous possible opportunities for engagement with the private sector. For example, a network of LGBTI supportive businesses may be established which are committed to working towards improving their workplace and management cultures to be more inclusive of SOGI diversity. This may include

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125 International Labour Organization, *Executive Dialogue with Private Sector on Rights, Diversity, and Equality at Workplace*. Available at [http://www.ilo.org/jakarta/whatwedo/eventsandmeetings/WCMS\\_421165/lang--en/index.htm](http://www.ilo.org/jakarta/whatwedo/eventsandmeetings/WCMS_421165/lang--en/index.htm).



actions such as staff training and awareness raising, creating SOGI inclusive codes of conduct, proactive recruitment processes, positive role modelling, and extending staff entitlements to the partners of LGBTI people. These pro-LGBTI business networks may be local, national, regional or international. In particular, it may be beneficial for LGBTI activists to target big or multinational companies who have large numbers of employees and significant influence in the business world. These larger companies have the potential to make good partners in leading positive changes in the private sector.

LGBTI organisations may also consider working with the Ministry of Labour or equivalent, or with other law makers, to develop and enforce anti-discrimination legislation in workplaces and businesses. This anti-discrimination legislation should apply to all aspects of workplace practices, from recruitment through to training, employment, leave and other entitlements, dismissal, retrenchment and retirement, and should apply to both the formal and informal work sectors.

## 9. Working with the Education System

Schools, universities and the education system are formative institutions in the lives of many young LGBTI people and can play an important role in supporting and empowering young people to develop into confident, productive and engaged members of society. However, schools and universities can also be virulent grounds for homophobia and transphobia from other students, teachers and parents, which can cause significant strain on the wellbeing and development of LGBTI young people. In addition, certain aspects of a traditional school system can be particularly difficult for transgender and gender non-conforming young people, such as gender specific uniforms, activities, and segregated bathrooms. Teachers may also misunderstand the gender expressions and behaviours of SOGI diverse students and may misinterpret their gender non-conformity as misconduct that requires disciplinary action. Furthermore, schools can be moralistic in their instruction and impart conservative ideas of sex and sexuality or may simply avoid the subject.<sup>126</sup>

Engaging schools in anti-homophobia and anti-transphobia education and developing a culture that is welcoming of all students, including SOGI diverse youth, is an important intervention strategy. The approach taken may need to be more or less conservative depending on the receptiveness of the institution. Interventions in more conservative environments may begin with a focus on non-discrimination.<sup>127</sup> Entry points may include, for example, working with students, teachers, schools and the Ministry of Education to develop programs that are attractive to young people to raise awareness of SOGI diversity and to model positive behaviours of acceptance and inclusiveness. Acceptance of SOGI diversity should be integrated into the school's curriculum and

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126 Saroha, above n 30.

127 Ibid.



educational materials. For example, textbooks should include stories or images of SOGI diversity throughout different subjects, such as history texts featuring significant LGBTI persons who have contributed to the country's or world history, literature courses acknowledging SOGI diverse writers, authors and poets, and home economics including portrayals of same-sex relationships. SOGI diversity awareness may also be integrated into other health and wellbeing initiatives run by schools, such as health education, anti-bullying programs or depression/suicide prevention programs.<sup>128</sup> In addition, counselling and psychological support may be a helpful for young people who are struggling with their gender identity and sexual orientation.<sup>129</sup> Hence, there are a number of potential entry points for LGBTI organisations to work with schools, teachers and the Ministry of Education to sensitively and accurately include SOGI diversity across various aspects of school and university life.

## 10. Facilitating Faith and Interfaith Networks

Religion and religious institutions are an important part of many South East Asian societies. However, some religious bodies can also be staunch opponents of LGBTI rights and yield strong influence over their constituents and broader society. Hence, engaging religious bodies and institutions can be a challenging but important entry point for the LGBTI community. To enter this conversation, the LGBTI community may consider reaching out to religious bodies and communities that have interpreted their faith in a way that is affirmative of the existence of LGBTI people and supports their humane and dignified treatment. Such interpretations of faith exist and can be strong allies for the LGBTI community and, importantly, can offer support and acceptance to LGBTI people of faith. With the support of affirming religious communities or bodies, LGBTI activists may engage with more influence in conversations with other religious leaders, communities or bodies that hold stronger opposition to LGBTI people, and may be able to speak in a language that is more likely to influence them.

Building networks between the same faith, and building interfaith networks, in support of LGBTI rights can also be valuable and important. These faith and interfaith networks can be grown locally, nationally, regionally and internationally. The dialogue it may inspire, the interpretations of faith it may support, and the actions it may generate, can be important for shaping and changing society to create more tolerance, acceptance and dignity for LGBTI people. Progressive interpretations of faith are also important to counter the influence that is growing in some areas across the region of fundamentalist interpretations which are severely restrictive of LGBTI rights. In some cases, this may need to begin with addressing the taboo around sexuality in general and advocating for a position of non-violence towards LGBTI people.<sup>130</sup> In other cases, it may involve

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128 For example, see UNESCO's activities on homophobic bullying in schools. Available at <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/health-education/homophobic-bullying/>.

129 Saroha, above n 30.

130 Ibid.

progressing the level of acceptance of LGBTI persons. For example, in situations in which religious leaders or bodies espouse acceptance of LGBTI individuals only if they remain celibate, the dialogue may need to advocate for a greater level of acceptance of LGBTI people which is not premised on such conditions.<sup>131</sup> Hence, the conversations to be had will depend upon the religious and institutional context and how open or closed key stakeholders are to the issue of LGBTI rights.

## 11. Engaging the Media

Engaging the media can be an important strategy and entry point for advancing LGBTI rights. Strategies for LGBTI activists may include building a network of supportive journalists, presenters or others working in the media and providing them with encouragement to continue their support for the LGBTI community. Working with the media to offer them positive and interesting stories, empowering role models, and new and exciting ideas in support of LGBTI rights may also increase positive coverage of LGBTI issues. This may start to influence the way that SOGI diversity is portrayed in the media and counteract stereotypes or negative perceptions that may be held by the broader community. Offering training and capacity building to media personnel on LGBTI issues is, of course, also important. These networks of supportive media personnel may be at a local, national, regional or international level.

As well as working with supporters of LGBTI rights, it is also imperative to address those within the media who continue to perpetuate discrimination or hatred towards LGBTI persons. It should be clearly but sensitively communicated to individuals and their organisations that discrimination, ridicule and hatred of LGBTI people is not acceptable, and to draw their attention to values such as humanity, dignity, and respect for human rights, as well as any legal prohibitions against discrimination which may exist. Drawing on supporters or allies of the LGBTI community who may have greater influence over particular individuals or media organisations may also be an effective way to deliver the message on the need to be tolerant and accepting of SOGI diversity.

## 12. The Potentials of Social Media and the Internet

Social media and the internet have been revolutionary tools for social justice movements. New technologies have enabled oppressed or marginalised individuals, collectives, and organisations to communicate their messages to the rest of the world, connect with one another, organise and mobilise, and, to an extent, evade government repression and censorship. Social media and the internet offer the LGBTI community similar opportunities and many LGBTI activist are already using the power and anonymity of the internet to grow the movement for LGBTI rights. In recent years, using online

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131 Poore, above n 31.

platforms to effectively build and grow a supporter base, such as Facebook, Twitter, Instagram, YouTube, blogs and websites, has become increasingly sophisticated and LGBTI activists may benefit from training and capacity building on how to make the most of these tools. In States in which the government continues to pursue censorship of certain online content or to target online activists, LGBTI activists and organisations will need to take greater precautions and should develop their skills in digital security to ensure their safety when engaging in online activism.

Social media and the internet also provide platforms for LGBTI individuals and the community to express their views, share their stories, and challenge and deconstruct heteronormative understandings of sexuality and gender. It may also offer a way to reach individuals who are isolated or struggling with their sexual orientation or gender identity and to offer them support and information. This may be particularly important to counter the homophobia and transphobia which can be found on the internet and which can be targeted at particular individuals. Within States in which aspects of SOGI are still criminalised or there is significant community disapproval, the internet can be a comparatively safer space to start developing connections between LGBTI individuals and to discuss their experiences, hopes and plans. Social media and the internet also offer a cost-effective and accessible way to build networks bilaterally and regionally, and to develop and work on regional plans for action on LGBTI rights. However, a limitation of using online spaces to organise for LGBTI rights is that access to the internet may be limited to more privileged sections of the community (e.g. middle or upper class, educated, English speaking). Hence, LGBTI activists and organisations who are using online tools need to also use other strategies and approaches to be inclusive of those who may not have access to the same technologies.

### 13. Working with Intersectionalities

Intersectionality<sup>132</sup> is not only a powerful tool for understanding power, privilege and oppression, but it can also be a strategy for movement building, forming alliances and advancing LGBTI rights. SOGI diversity is a cross cutting issue that affects all aspects of society. SOGI individuals exist in every facet of society and are a part of every culture, class, religion, profession, and social grouping. Hence, the issue of SOGI diversity is relevant to every other social justice movement, such as the movement for women's rights, disabled persons' rights, workers' and migrant workers' rights, the rights of refugees and asylum seekers, and the rights of ethnic, religious or cultural minorities. Alliances may be built with these other movements as SOGI diverse individuals are a part of all of these movements. Furthermore, these alliances may be built locally, nationally, regionally or internationally, such as through engaging with the ASEAN Disability Forum or ASEAN Forum on Migrant Labour.

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132 The importance of intersectionality has been recognised by the CEDAW Committee in its General Recommendations No. 27 and No. 33. Available at <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.

In addition, LGBTI individuals who enjoy intersectionalities that accord them certain privileges may also have access to additional entry points for advancing LGBTI rights. LGBTI individuals who have access to wealth, education or power, for example, by belonging to influential professions, such as doctors, lawyers, journalists or academics, or who are a part of cultural, ethnic or religious majorities, can use their privilege to speak up about LGBTI issues in spaces which may be not accessible to others and may be able to influence other people who are in positions of power. This needs to be done with awareness of the other marginalised voices who are excluded from such conversations and with the acknowledgement that privileged LGBTI individuals cannot speak for all members of the LGBTI community. However, such entry points, which may only be accessible to those with privilege, should be utilised strategically and mindfully in the movement for LGBTI rights.

## 14. Promoting the Rights of Transgender Persons

Transgender persons across South East Asia continue to experience a high level of discrimination, prejudices, fear and hatred. Hence, there remains many opportunities and much work to be done to further the rights of transgender people. Transgender women tend to be particularly marginalised and are often forced to live their lives on the very fringes of society. This is underpinned by a long history of stigma against and preconceived notions about transgender women. A cultural shift needs to take place in how transwomen are viewed by broader society. This requires action to be taken on a variety of fronts and through different channels. For example, the media often portrays and perpetuates the stereotype of transwomen as dramatic, scandalous and extremely deviant. Efforts must be made to ensure that transwomen can be integrated openly and respectfully into the community through countering these stereotypes. In addition, the marginalisation of transwomen has often provided them with few choices but to engage in professions that exist in the shadows of society, such as the sex industry. This can contribute, however, to the further marginalisation of transwomen and to enabling the stigma and stereotypes around transwomen to be reinforced. Hence, it is important to address issues of livelihood and financial security for transwomen through legal protection against discrimination in employment, affirmative action, awareness raising, and cultural changes within the workplace. As transwomen are given increasing opportunities to engage in the public and cultural spheres of their communities, their increased visibility will also contribute to reducing the stigma that surrounds them.<sup>133</sup>

There also remains much work to be done to advance and protect the rights of transgender men. Whilst transwomen may be marginalised but highly visible in particular stereotyped ways, transmen are generally invisible across South East Asian societies. Transmen are invisible to the extent that there exists no local terminology for transmen, no acknowledgement of their existence, and a tendency to conflate

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133 Saroha, above n 30.



them with butch lesbians.<sup>134</sup> Their invisibility extends to invisibility within the LGBTI movement. This invisibility means that there is less understanding of the issues faced by transmen, limited inclusion of transmen in advocacy initiatives around LGBTI rights, and greater struggles for transmen in all spheres of life. For example, medical interventions to affirm the gender identity of transmen is more expensive and less readily available than compared to transwomen. Hence, an important entry point is the inclusion of transmen in the agenda for LGBTI rights. This should include the devotion of funding and resources to research, understand and promote awareness around the specific needs of transmen, the conscious inclusion of transmen in LGBTI organisations and events such as through ensuring that invitations are extended to and places reserved for transmen, and the providing transmen with the opportunity to speak and organise for themselves. This inclusion of transmen should, of course, also apply to broader society and transmen should be included in all the opportunities and entry points for furthering LGBTI rights within broader society, such as protection under the law, equal access to opportunities in education and employment, and inclusion in community awareness raising initiatives, to name a few.

## 15. The Support of Families and Communities

The support of family and friends can be critical to the health and wellbeing of LGBTI people. However, parents and friends may also need support and accurate information to enable them to become allies of their LGBTI loved ones. This may be particularly the case for South East Asian countries in which the visibility and acceptance of LGBTI people is still low or relatively new and in which many stereotypes and misunderstandings around LGBTI people continue to prevail.

Organisations such as PFLAG (Parents and Friend of Lesbians and Gays) can contribute to building a supportive environment for parents and friends to understand SOGI diversity, provide support to one another, and learn to be confident and proud of their SOGI diverse family and friends. PFLAG groups already exist in South East Asia, such as in Viet Nam and Cambodia, which demonstrates that support groups for parents and friends can work in a South East Asian context. These groups may support the formation of more groups in other parts of the country, or can expand to provide support for parents and friends in other South East Asian nations. Other countries may learn from the experiences of Viet Nam and Cambodia, or may choose to establish different support groups that are specific to their needs and culture. Regardless of the group name or structure, providing support to the parents, friends and community of LGBTI individuals is an important entry point for advancing LGBTI rights and acceptance.

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134 Poore, above n 31.

## 16. Changing Hearts and Minds

The first challenge in the movement for LGBTI rights is changing the hearts and minds of individuals. Members in the community may be well meaning but the naturalisation of heteronormative sexuality and gender may mean that they have spent little time questioning social constructions of gender or (hetero)sexuality, and may have been exposed to and internalised stereotypes or negative portrayals of LGBTI people. From this change in hearts and minds, other changes in society will follow – attitudes will change, actions will change, and the State’s laws and policies will change accordingly.


Raising awareness on SOGI diversity within the community is an important step in advancing LGBTI rights. This may be done in a myriad of ways. One popular and relatively non-confrontational strategy is to participate in internationally recognised days of celebration, such as International Women’s Day on March 28 or Human Rights Day on December 10. The International Day Against Homophobia (IDAHO) on May 17 and Transgender Day of Remembrance on November 20 are also becoming increasingly popular as days for community mobilisation and commemoration. Awareness raising events can also be planned around national days of significance or other community events or festivals.

In addition, the sharing of personal stories can be a powerful strategy and entry point to changing hearts and minds. In particular, stories that demonstrate the difficulties still faced by LGBTI people and the strength of overcoming these struggles can resonate in a way that facts, statistics and statements about human rights cannot. These stories may be shared through inspirational speakers, music, literature, film, art, in mainstream and alternative media, online, or through personal connections and contacts. Collecting these stories may also be create a useful resource for LGBTI activists and can be a way to record the history of their struggles for rights and recognition.

Changing the hearts and minds of those who may become strong allies of the LGBTI movement is particularly important. For example, other women and those in the broader women’s movement can become strong supporters of LGBTI persons due to their shared experiences of oppression under the heteropatriarchy. However, women’s rights activists may need to first become sensitive to and aware of the prejudices they may hold against LGBTI people and come to recognise that these prejudices come from the same patriarchal ideology that oppresses them. Once these connections are made, the hearts and minds of the broader women’s movement may change to embrace LGBTI members and recognise that the inclusion of LGBTI people is an important step in the movement towards gender equality.

## 17. Empowering the LGBTI community

Underpinning the success of all of these other entry points for advancing LGBTI rights is the empowerment of the LGBTI community. This empowerment may come through, first, deconstructing heteronormative concepts of gender and sexuality which exclude, marginalise and pathologise SOGI diversity, and reformulating, rearticulating and reaffirming alternative forms of being sexual and gendered individuals. Exposing structures of power, privilege and oppression, developing a language to express one's experiences of empowerment and marginalisation, and forming a collective alternative consciousness can be important for challenging the dominance of the heteropatriarchy. In practical terms, this may include: movement building, such as motivating others to join the movement for LGBTI rights; capacity building, including in human rights and advocacy; creating safe spaces for expression, sharing and connection; providing individuals with a platform to speak publically in support LGBTI rights; campaigning, strategy development, and action planning; creating or exploiting opportunities to further LGBTI rights; and working in national, regional and international coalitions and networks. For this movement building to be possible, LGBTI organisations need adequate funding from public and private donors, and donors need to ensure that they have progressive funding guidelines in which the eligibility for funds dedicated to women's empowerment includes LGBTI people. Hence, empowerment of the LGBTI community is a key component of the movement for LGBTI rights and is essential to building a future where SOGI diverse individuals are able to fully enjoy all of their human rights and freedoms.





## SECTION 5: Concluding Observations and Recommendations



The experience of being LGBTI in South East Asia can vary greatly across the region. Whilst some may be able to march proudly down the street during their annual LGBTI Pride celebrations, others must live their lives clandestinely to avoid acts of hatred and violence. Whilst the stories and experiences of being LGBTI in South East Asia may be unique to each individual, the desire to be able to live with security, dignity, freedom, and equal opportunities binds us all together in our struggle for LGBTI rights.

Some of the challenges, successes and opportunities for the LGBTI community have been explored in this report which was inspired by the discussions at the *2016 Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons*. This report demonstrates the long way that LGBTI communities have come in many South East Asian countries, and the long way that many States still have to go to fully respect, protect and fulfil the human rights and freedoms of their LGBTI citizens.

Emerging from the Regional Consultation is the clear conviction that the movement for LGBTI rights must continue. We all must work together to ensure that all persons, regardless of sexual orientation, gender identity or any other marginalised identity, are able to enjoy their fundamental human rights and dignity. In the words of the *Universal Declaration of Human Rights*:

**[R]ecognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.**

Let us continue to work together to ensure that this collective vision of freedom, justice and peace for all is achieved within our lifetime.

### **Recommendations for Programming Actions for UN Women and UN Agencies**

1. Mainstream the rights of and issues faced by LGBTI persons throughout all of the programmes and policies of UN Women and other UN agencies, and raise these as issues of concern within internal and external engagements. Establish or expand dedicated programmes of action on LGBTI rights for as long as they are needed. UN Women and other UN agencies should also examine the constructions of sexuality and gender contained within the language of their policies and programmes and within the culture of their workplaces, and redefine and adopt more progressive and inclusive understandings of gender and sexuality which move beyond heteronormative constructions of gender and sexuality.
2. Publicise the Concluding Observations of the CEDAW Committee, and other recommendations of UN human rights bodies, in regard to sexual orientation and gender identity and encourage State implementation of these recommendations. Support civil society and LGBTI organisations and activists in their advocacy work

to pressure States to respect, protect and fulfil their human rights obligations, and support their advocacy work towards UN human rights bodies to include LGBTI issues.

3. Provide capacity building for civil society organisations and activists working on LGBTI rights to deepen their knowledge of human rights, UN human rights mechanisms, advocacy skills and key advocacy opportunities. Provide capacity building within UN Women and other UN agencies to deepen knowledge on the issues faced by and the rights of LGBTI people.
4. Facilitate progressive dialogues between different stakeholders on LGBTI rights, including civil society organisations, law enforcement, the judiciary, and State authorities or representatives. Support civil society organisations to access powerholders and decision-makers in their advocacy work on LGBTI rights. Provide spaces for networking and movement building by bringing together LGBTI civil society organisations and activists from across the region.
5. Support the organisation of regional or international events to advance the rights of LGBTI people, including side events at regional or international forums, such as meetings of human rights organs or bodies of the United Nations.
6. Provide platforms and spaces for the exchange of information, sharing of good practices, and collection of experiences of working for LGBTI rights, particularly across the region. These spaces may include both online spaces and opportunities to meet and share experiences in person.
7. Contribute to building the evidence base on the issues and challenges faced by LGBTI persons, such as conducting and supporting research projects, collecting information and evidence including disaggregated data, and mapping current resources and information.
8. Support the review and reform of legal frameworks to remove punitive or discriminatory laws and policies and to enact laws that protect LGBTI persons from human rights violations, including all forms of violence and discrimination, and implement programmes to enable LGBTI persons to seek access to justice, remedy and redress for human rights violations suffered.
9. Provide support to LGBTI organisations in regard to funding and resources, including working with civil society organisations to secure funding from other sources.
10. Ensure that all programmes and activities are implemented with a rights-based approach, including meaningful involvement of affected communities in all stages of the programme cycle.



# ANNEX 1: The Regional Consultation – Concept Note



## CONCEPT NOTE

# REGIONAL CONSULTATION ON PROMOTING AND PROTECTING THE RIGHTS OF LESBIANS, BISEXUAL WOMEN, TRANSGENDER AND INTERSEX PERSONS IN SOUTHEAST ASIA

29<sup>th</sup> February – 1<sup>st</sup> March 2016  
Dusit Thani Hotel, Bangkok

## Background

Guided by the fundamental principles of universality, equality and non-discrimination, Article 1 of the Universal Declaration of Human Rights reaffirms that all human beings are entitled to enjoy their rights, freedoms, and all other civil, political, economic, social and cultural rights without distinction of any kind. Other international treaties mutually reinforce human rights of all persons and their entitlements to live a life free from fear and discrimination. But people who choose not to follow the prevalent sexual and gender norms regularly experience discrimination related to housing, social security, employment, and are at increased risk of violence and abuse. States are obligated to exercise due diligence and take necessary measures to protect, prevent, investigate, punish and redress acts of violence, (direct and indirect) discrimination against all people, including on grounds of sexual orientation and gender identity (SOGI). However, in many countries around the world as well as in the region of South East Asia, states do not provide adequate protection and redress for abuses and discrimination faced by lesbian, gay, bisexual, transgender, intersex persons (LGBTI). Additionally, at least 18 countries out of 38 in Asia Pacific region criminalize same sex relationships, which leads to wide-spread human rights abuses, mental and physical violence, social exclusion and discrimination at home, at school, in the workplace and in the media. These have deep consequences on the lives of LGBTI persons including increased risk to HIV. Some of these countries also have rigorously enforced religious laws that criminalize same sex relationships and gender non-conformity (e.g., cross dressing). These laws, which are often viewed as “morality laws” have overlapping harmful impact on women in general in these countries as they severely penalize all consensual relationships outside marriage (i.e., pre-marital, extra marital, and same sex).

Vibrant LGBTI movements exist in South East Asia and progress has been made to provide increased legal protection in some countries. For example, in the Philippines,



there is now protection against discrimination on the grounds of sexual orientation including in the form of provincial level policies. However implementation needs to be improved.\* In Viet Nam, same-sex marriage was removed from forbidden forms of marriage in the Law and Marriage and Family revised in 2014. In Thailand and Vietnam, there have been progress made in recognition of transgender persons in various legal provisions. However, despite such progress, LGBTI persons are criminalized in a number of countries including given death penalty and are deprived of legal protection under national laws. Furthermore, deeply rooted traditional heterosexual gender norms, values and gender stereotypes perpetuate stigma and discrimination against LGBTI populations.

UN Women is implementing the Regional Programme on Improving Women's Human Rights in Southeast Asia (CEDAW SEA Phase II) supported by Global Affairs Canada, covering eight countries namely Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Thailand, Timor-Leste and Viet Nam. The programme focuses on enhancing the implementation and monitoring of the principles of CEDAW at national level and women's access to justice through awareness raising and capacity development of government branches (executive, legislative and judiciary), as well as of civil society organizations. While ensuring women have access to justice, failure to consider and address gender differences in laws and in the implementation of laws may perpetuate gender inequality. Cultural factors, manifestations of extremist ideologies, lack of awareness of rights and legal remedies, lack of awareness of rights among justice actors and economic resources impede women from getting legal protection or remedies from formal justice mechanisms. Sexual orientation is a blind spot for many state institutions and NHRIs. One example of how this blindness operates is when laws that prohibit domestic violence and family violence cannot be accessed by women in same sex relationships even when these laws are applicable to women in de facto/ non-marital relationships. Definitions of rape are also so narrow that they do not acknowledge or redress rape committed against lesbians, bisexual women, transgender and intersex persons.

Through CEDAW SEAP, UN Women advocates and supports legislative change and national law/policies review to ensure CEDAW compliance; build national expertise/network on CEDAW; promote knowledge generation, dissemination and South-South exchanges to achieve the following outcomes of the programme:

- Increased skills and knowledge of government officials and civil society gender experts on CEDAW compliance in development and monitoring new and revised legislative frameworks;
- Increased awareness among formal and informal justice system actors of CEDAW commitments;
- Strengthened monitoring and accountability mechanisms for implementation of CEDAW commitments.

An important reference for UN Women's work to strengthen LGBTI rights is the September 2015 joint call to action on ending violence and discrimination against lesbian, gay, bisexual, transgender and intersex persons by 12 UN agencies including UN Women. Discrimination because of real or perceived sexual orientation and non-conforming gender identity and gender expression intersect and overlap with other forms of discrimination that women face and are intrinsically linked to broader issues of gender equality, women's rights and empowerment. In several countries, UN Women has started working on these intersecting issues and promoting and protecting the LGBTI rights through its work. For example, in Cambodia, UN Women partnered with Open Institute, women from LGBT communities, and women living with HIV to develop a position paper on ending discrimination against these groups in all spheres of life. This paper was disseminated to duty bearers nationwide and presented to lawmakers at the national and ASEAN levels. Thirty-six (36) media stories that promoted public understanding of the rights of women/girls with HIV and LGBT people were also widely disseminated. Changes in public attitudes on gender have been reported by listeners of a radio drama on non-discrimination that was launched by NGO-CEDAW, Radio Sarika and the Voice of Democracy with funding support from UN Women. At the regional level, UN Women supports a regional campaign called Unzip the Lips, a campaign -for and by- key HIV affected women and girls (female sex workers, women living with HIV, female drug users, migrant women and transgender persons) to foster a common platform for galvanizing advocacy efforts and facilitate their participation in important regional and international human rights processes and events including in 2014 at the Beijing Plus 20+ review meeting to position the rights and issues facing transgender persons and other women from marginalized communities. UN Women would like to build on these activities and identify strategic opportunity and entry points for mainstreaming issues and concerns of lesbians, bisexual women, transgender and intersex persons into its programmatic and normative work, taking into account the Beijing Platform for Action and other agreed commitments including the SDGs.

The Regional Consultation recognizes and builds on the work in advancing the rights and the well-being of LGBTI people, reducing inequality based on sexual orientation and gender identity and supporting inclusive development in the region including UNDP, Being LGBT in Asia Initiative, UN Free and Equal Campaign for Lesbian, Gay, Bisexual and Transgender Equality, etc.

In partnership with OutRight Action International, and in collaboration with UNDP and UNAIDS, UN Women Regional Office for Asia and the Pacific, is organizing a two-day *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons*.

**The Key Objectives of the consultation are:**

- Providing an overview of human rights standards and norms protecting rights of lesbians, bisexual women, transgender and intersex persons;
- Identifying key issues and barriers facing LGBTI persons in SEA including issues

related to discrimination, rights violations, lack of access to justice and redress,, as well as culture and social marginalization;

- Discuss the role of and explore opportunities for strengthening partnerships with national human rights institutions, ASEAN bodies, community/religious leaders, law enforcement officials, UN Women and other relevant stakeholders in protecting the human rights of LGBTI persons and ending stigma and discrimination on grounds of sexual orientation, gender identity and gender expression;
- Facilitate learning and sharing of good practices in the region on addressing, protecting and promoting human rights of LGBTI persons;
- Identify key programming areas including next steps for strengthening inclusion of LGBTI issues in UN Women's programs in the region.

### **Expected Result(s)**

- Gained common understanding of the key issues and existing challenges of stigma and discrimination faced by lesbian, bisexual women, transgender and intersex persons in the context of achieving gender equality and women's empowerment
- Developed new and strengthened existing partnerships in the region to promote and protect the rights of LGBTI persons
- Identified key programming areas including next steps for strengthening inclusion of LGBTI issues in UN Women's programs in the region



## ANNEX 2: List of Participants



## Speakers

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South African Embassy  
Bangkok, Thailand

**Ms. Benjamas Chitrungee**  
Social Secretary  
South African Embassy

**H.E. Mr. Staffan Herrström**  
Ambassador  
Embassy of Sweden

**Ms. Areewan Chanthra**  
Social Secretary to the Ambassador  
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## ANNEX 3: Key Resources

## Yogyakarta Principles

[http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm)

## 2007 Born Free and Equal – Sexual Orientation and Gender Identity in International Human Rights Law - OHCHR

<http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>

## Free and Equal Fact Sheets - OHCHR

<https://www.unfe.org/en/fact-sheets>

## BEING LGBT IN ASIA: Country Report – UNDP

<http://www.asia-pacific.undp.org/content/rbap/en/home/operations/projects/overview/being-lgbt-in-asia.html>

### Including:

Cambodia Country Report

Indonesia Country Report

Mongolia Country Report

Nepal Country Report

Thailand Country Report

Viet Nam Country Report

## Stories of Being Me

Series 1 (7 episodes)

<https://www.youtube.com/playlist?list=PLhXRDyDPmGo-FPhWZhHf0d24OgZ700rnK>

Series 2 (5 episodes):

[https://www.youtube.com/playlist?list=PLhXRDyDPmGo9KFPMNONcaYqQDuOVGk\\_94](https://www.youtube.com/playlist?list=PLhXRDyDPmGo9KFPMNONcaYqQDuOVGk_94)

## Gender Identity and Sexual Orientation in Thailand – ILO

[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms\\_356950.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_356950.pdf)

## Workshop on the Role of National Human Rights Institutions in Promoting and Protecting the Human Rights of LGBTI people in Asia and the Pacific – APF

<http://www.asiapacificforum.net/human-rights/sogi/2015-workshop-role-nhri-lgbti-asia-pacific/>

## CEDAW Videos

English - [https://www.youtube.com/watch?v=FKYM7g\\_gFRA&list=PLPU9AH-smFbSCTsWhjoejhnaSmIWOhef](https://www.youtube.com/watch?v=FKYM7g_gFRA&list=PLPU9AH-smFbSCTsWhjoejhnaSmIWOhef)

Khmer - [https://www.youtube.com/watch?v=3\\_Hm0JaD2y4](https://www.youtube.com/watch?v=3_Hm0JaD2y4)

Thai - <https://www.youtube.com/watch?v=WagD3ez--4Q>

Tetum - [https://www.youtube.com/watch?v=QJ\\_UYgHWm94](https://www.youtube.com/watch?v=QJ_UYgHWm94)

Vietnamese – <https://www.youtube.com/watch?v=1nRYQE9yLdk&list=PLPU9AH-smFbSCTsWhjoejhnasmtlWOhef&index=4>

Good Practices in Promoting Women’s Human Rights Compliant Justice Delivery - UN Women

<http://asiapacific.unwomen.org/en/digital-library/publications/2015/09/good-practices-in-promoting-women-s-human-rights-compliant-justice-delivery>

Do Our Laws Promote Gender Equality? A Handbook for CEDAW-Based Legal Reviews - UN Women

<http://asiapacific.unwomen.org/en/digital-library/publications/2012/8/do-our-law-promote-gender-equality-cedaw-bahasa>

Available in English, Bahasa Indonesia, Laotian, Khmer and Vietnamese

Information on the *Regional Consultation on Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons*

<http://asiapacific.unwomen.org/en/news-and-events/events/2016/02/regional-consultation-on-promoting-and-protecting-the-rights>







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