



**ASIA PACIFIC FORUM**  
ADVANCING HUMAN RIGHTS IN OUR REGION

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# **Part of our Everyday Work: NHRI Guidelines for Mainstreaming SOGISC Work**

July 2017

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*Part of our Everyday Work: NHRI Guidelines for Mainstreaming SOGISC Work*

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# 1. Introduction

Every person has a sexual orientation (SO), gender identity (GI) and sex characteristics (SC). Lesbian, gay, bisexual (LGB), transgender (T) and intersex (I) people experience discrimination, and are at risk of further human violations, because of one or more of these attributes.

In 2016, the Asia Pacific Forum of National Human Rights Institutions (APF) and the United Nations Development Programme Bangkok Regional Hub (UNDP) developed a comprehensive manual for APF member national human rights institutions (NHRIs) on *Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics*.<sup>1</sup>

This shorter mainstreaming guide is a practical resource for NHRIs on how to integrate a focus on sexual orientation, gender identity, and sex characteristics (SOGISC) into their everyday work. It provides links to where further details can be found, including in the APF/UNDP SOGISC manual. The APF has consulted widely with NHRIs, and with the sixty NGO and NHRI participants on its SOGISC training courses, about the development of these guidelines.

## ABBREVIATIONS

<b>APF</b>	Asia Pacific Forum of National Human Rights Institutions
<b>GI</b>	gender identity
<b>I</b>	intersex
<b>LGB</b>	lesbian, gay, bisexual
<b>LGBTI</b>	lesbian, gay, bisexual, transgender or intersex
<b>NHRIs</b>	national human rights institutions
<b>SC</b>	sex characteristics
<b>SO</b>	sexual orientation
<b>SOGISC</b>	sexual orientation, gender identity and sex characteristics
<b>T</b>	transgender
<b>UNDP</b>	United Nations Development Programme Bangkok Regional Hub

## 1.1. TERMS AND DEFINITIONS

The use of inclusive, positive terminology empowers individuals and gives needed visibility to the human rights issues they face. Every individual has the right to choose what terms best describe their sexual orientation, gender identity or expression, or their sex characteristics. It is also their choice whether, when and to whom they disclose this information about themselves.

The APF manual and these guidelines use the following terms.

**Sexual orientation** refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, another person. A person who is attracted solely to someone of the same sex might identify as *gay* or, if female, as *lesbian*. Someone who is attracted to another person regardless of their sex might use the term *bisexual*.

**Gender identity** is a person's internal sense of being a man or a woman or a third or other alternative gender, or a combination of genders. *Transgender*, *trans* and *gender diverse* are three umbrella terms to describe people whose gender identity does not match the sex they were assigned at birth.

A related term is **gender expression**. It refers to a person's ways of communicating masculinity or femininity (or both or neither) externally through physical appearance (including clothing, hair styles and the use of cosmetics) and mannerisms, ways of speaking and behavioural patterns when interacting with others. As gender expression is visible, it is often an element in discrimination against any lesbian, gay, bisexual, transgender or intersex (LGBTI) person who is considered to be stepping outside gender-based norms.

**Sex characteristics** refers to the chromosomal, gonadal and anatomical features of a person. Some are primary characteristics (for example, reproductive organs, genitalia, chromosomes, and hormones). Some are secondary characteristics (such as muscle mass, hair distribution or breast development). *Intersex* is an umbrella term used to describe people born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies.

Umbrella identity terms such as LGB, T and/or I are designed to include anyone who shares a specific characteristic. They do not replace local terms from a specific cultural tradition or language, including terms that have existed for a long time.<sup>2</sup>

Umbrella terms should be used accurately. For example, a broad umbrella term such as SOGISC (or SOGIESC to encompass gender expression too) or LGBTI is appropriate when the work being described covers all of these issues and communities. Otherwise, it is better to use narrower terms to reflect the tighter focus of your work.

Sexual orientation, gender identity and gender expression are each a spectrum. They are not limited to two binary concepts such as homosexual or heterosexual, female or male, feminine or masculine. Similarly, there is a broad range of variations in sex characteristics.

**Read more** about SOGISC terminology in this NHRI comic resource at: [www.hrc.co.nz/files/4314/2427/4895/BornFreeEqual\\_for\\_Web.pdf](http://www.hrc.co.nz/files/4314/2427/4895/BornFreeEqual_for_Web.pdf).<sup>3</sup>

## 1.2. WHY MAINSTREAMING IS IMPORTANT FOR HUMAN RIGHTS WORK

NHRIs are aware of the importance of making gender equality a primary goal in their work and of using the strategy of gender mainstreaming as well as gender specialisation as the most effective means of achieving this goal.<sup>4</sup> Similarly, mainstreaming SOGISC work means considering how your work impacts on LGBTI people, as groups vulnerable to discrimination and marginalisation. It ensures that the specific experiences of LGBTI people are visible and incorporated into the design, implementation, monitoring and evaluation of an NHRI's work. The ultimate goal of all forms of mainstreaming is to achieve equality.

These guidelines focus on the generic or mainstream efforts that an NHRI can undertake as part of a 'business as usual' approach to LGBTI-inclusion. Such mainstreaming efforts complement but do not replace the need for targeted, specialised LGBTI policies and programmes, including affirmative action or special measures.

**Read more** about balancing mainstreaming and specialisation strategies in Chapter 12 of APF's manual on *Promoting and Protecting the Human Rights of Women and Girls*.<sup>5</sup>

## 1.3. WHAT DO THESE GUIDELINES INCLUDE?

These mainstreaming guidelines provide a brief overview of some human rights issues for LGBTI people before focusing on how NHRIs are using their mandated functions to respond effectively. After touching on NHRIs' internal work, most examples look at NHRIs' external work protecting and promoting human rights.

Topic	APF manual	This guide
<b>Terms and definitions</b>	Section 1.3	Section 1.1
<b>Human rights issues for intersex people</b>	Chapter 4	Section 2.1
<b>Human rights issues for transgender people</b>	Chapter 3	Section 2.2
<b>Human rights issues for lesbian, gay and bisexual people</b>	Chapter 2	Section 2.3
<b>NHRIs' internal work</b> <ul style="list-style-type: none"> <li>• Sensitisation training, strategic planning, employment, and recognition</li> </ul>	Sections 8.1 – 8.2	Sections 3.1 – 3.4
<b>NHRIs' external promotion and protection work</b> <ul style="list-style-type: none"> <li>• Advice</li> <li>• Education and awareness raising</li> <li>• Monitoring</li> <li>• Complaint handling</li> <li>• Court interventions and monitoring</li> <li>• Advocacy</li> <li>• Cooperation and engagement</li> <li>• National inquiries</li> </ul>	Section 8.3 Section 8.4 Section 8.5 Section 8.6 Section 8.7 Section 8.8 Section 8.9 Section 8.10	Section 4.1 Section 4.2 Section 4.3 Section 4.4 Section 4.5 Section 4.6 Section 4.7 Section 4.8
<b>Conclusion</b>		Section 5

## 2. Some human rights issues for LGBTI people in this region

Chapters 2, 3 and 4 in the APF manual provide comprehensive summaries of human rights issues faced by LGB, T and I people respectively in this region. This section highlights some of the most pressing issues and opportunities for making a real difference in LGBTI people's lives.

### 2.1. HUMAN RIGHTS FOR INTERSEX PEOPLE

The APF/UNDP blended learning course has shown that NHRIs have much less knowledge and experience working on human rights issues affecting intersex people than on human rights issues relating to sexual orientation or gender identity.

*"I came into this course thinking that [being] intersex was by choice but the more I have read through the materials have come to understand that people are born with [intersex variations]."*

There is an opportunity for NHRIs to help address this information gap. The Office of the High Commission for Human Rights has specifically recommended that "National human rights bodies should research and monitor the human rights situation of intersex people".<sup>6</sup> Some NHRIs in this region have already started this work. Others may not have looked at the experiences of intersex people directly but have relevant expertise from their work on human rights issues associated with medical interventions. For example, there may be overlaps between an NHRI's actions against female genital mutilation or forced sterilisation of people with disabilities and the approach it would take to human rights issues faced by intersex people.

Increasingly, UN treaty bodies are asking governments to provide information on steps they are taking to prohibit forced sterilisations and non-urgent, irreversible so-called "genital normalising" surgeries on intersex infants and children. These include:

- the Committee on the Rights of the Child's recommendations to Nepal and to New Zealand<sup>7</sup> and
- the Committee Against Torture's List of Issues to Australia<sup>8</sup> in December 2016 and to New Zealand in May 2017<sup>9</sup>

The **National Human Rights Commission of Nepal** participated in Nepal's first national intersex workshop in January 2016.

The **New Zealand Human Rights Commission** co-hosted its third Intersex Roundtable in April 2016, bringing together multiple stakeholders to address New Zealand's current practice of so-called "genital normalisation" on intersex children. The Commission is working with civil society and government to implement the outcomes of that Roundtable.<sup>10</sup>

In October 2016, the **Australian Human Rights Commission** announced it would be evaluating the current approaches to medical interventions on intersex people in Australia.

*"We will develop a nationally consistent, human rights based approach to decision making regarding medical interventions."*<sup>11</sup>

## 2.2. HUMAN RIGHTS FOR TRANSGENDER PEOPLE

Transgender people in Asia Pacific face violence, discrimination, criminalisation of so-called ‘cross-dressing’, limited access to gender affirming health services, and barriers to amending gender markers on official documents. When such legal gender recognition is dependent on medical requirements, this can amount to forced or coerced sterilisation.

Since late 2015, UNDP Bangkok Regional Hub has been conducting a legal gender recognition project in seven countries in Asia: Bangladesh, India, Nepal, Pakistan, China, the Philippines and Thailand. In addition, UNDP partnered with the Asia Pacific Transgender Network (APTN), who conducted equivalent assessments in Malaysia and Indonesia. Summaries of the nine country reports and a regional report are due to be published in mid-2017. Later in 2017, APTN will conduct a Pacific pilot of this legal mapping project in Fiji.

This research will give NHRIs detailed understanding of how laws, court decisions, policies and regulations impact on transgender people’s rights to recognition before the law. It provides a timely opportunity to consider legal and policy reforms needed to recognise the human rights of transgender people more broadly. Several NHRIs were closely involved in these projects. Some, including the **National Human Rights Commission of Bangladesh** (JAMAKON) have proposed projects to address identified legal and policy gaps.

## 2.3. HUMAN RIGHTS FOR LESBIAN, GAY AND BISEXUAL PEOPLE

Criminal laws, violence and discrimination target lesbian, gay and bisexual people because of their sexual orientation. These issues are frequently raised in recommendations by other countries during the Universal Periodic Review process. Often, they are compounded by intersectional discrimination and disadvantage. For example, violence against lesbian and bisexual women often occurs within the family, and could be incorporated into an NHRI’s work on gender-based violence.<sup>12</sup>

In some parts of the Asia Pacific region, consensual same-sex activity has never been criminalised, while in others there has been a gradual process of decriminalisation. For example, the *Crimes Act 2013* in Samoa repealed the offence of indecency between males. However, it retained sodomy<sup>13</sup> and “keeping a place of resort for homosexual acts”<sup>14</sup> as a criminal offence.

Fiji has moved the furthest in the Pacific, specifically prohibiting discrimination based on sexual orientation in its Constitution. Overall, more than half of the States in Asia Pacific criminalise consensual same-sex activity. Where criminalisation continues, the laws are not always enforced but they still have a negative impact on LGB people and violate their human rights. In all countries, there are opportunities to build support for human rights protections for LGB people. One of an NHRI’s roles is to promote the universality of human rights protections, including through public education, training law enforcement agencies, and dialogues with legislators and policy makers.

## 3. NHRIs' internal work

Often the first place to begin integrating a focus on SOGISC human rights is within an NHRI itself, through leadership from the NHRI's governing body and management. This section considers three specific areas of an NHRI's internal work, drawing on examples from this region. These areas are:

- Sensitisation training
- Strategic planning and
- Employment and Human Resource practices

It then concludes by reiterating the importance of NHRIs standing up for the universality of human rights, by recognising the human rights of LGBTI people.

### 3.1. SENSITISATION TRAINING

NHRI Commissioners and staff have been exposed to the same prejudices and stereotypes about LGBTI people as the wider community, and are likely to lack accurate information. Internal sensitisation training can address these gaps in human rights awareness. If it involves collaboration with local NGOs, it can build trust and strengthen the working relationship with organisations working on LGBTI issues.

The APF has developed a training programme to assist Commissioners and staff from NHRIs with new information, strategies and partnerships to bolster their work to promote and protect the rights of LGBTI people. It involves four weeks' online learning, followed by a five-day workshop where participants develop an action plan that will be presented to decision makers within their respective NHRIs. Importantly, representatives from civil society organisations actively working on these human rights issues also take part in the programme. Many of the proposed actions involve NGOs working with their NHRI back home to run sensitisation training for staff on SOGISC human rights.

So far, the APF course has been conducted at the sub-regional level, in South Asia, South East Asia and the Pacific.

**Watch** some of the participants talk about what they gained from this course at: [www.youtube.com/watch?v=m5guF4UWykU&feature=youtu.be](http://www.youtube.com/watch?v=m5guF4UWykU&feature=youtu.be).

*"In order to educate people to eradicate discrimination against LGBTQ people, NHRI staff must have knowledge on SOGISC first."*

*"Definitely I learnt more things from here because in my life this is a new issue for me."*

*"When I participated here I came to know very bad story of this community which really shocked me."*

*"It's up to the NHRI and the NGOs to work together, to start advocacy programmes."*

APF/UNDP SOGISC course participants from Nepal, Bangladesh, Malaysia and Myanmar NHRIs

#### EXAMPLE

In February 2017, at the request of the **Australian Human Rights Commission (AHRC)**, the APF conducted a one day SOGISC workshop encouraging AHRC staff to identify practical ways to ensure that issues for LGBTI people are considered across all parts of the AHRC's regular work programme. This included a specific discussion with Commissioners highlighting developments at the international level, and a session with complaint handling staff on responding to issues of workplace discrimination and harassment that transgender people face.

**Read more** at: [www.asiapacificforum.net/news/making-lgbti-rights-part-everyday-work/](http://www.asiapacificforum.net/news/making-lgbti-rights-part-everyday-work/).

## 3.2. STRATEGIC PLANNING

All NHRIs do strategic planning when they look at their internal capacities, assess the external human rights situation in their country, develop strategies to address that situation and identify priority areas to work on. This strategic planning process is an important time to identify where SOGISC work could be mainstreamed within your NHRI. It requires having sufficient information and data about the experiences of LGB, T and I people.

LGBTI people exist within all population groups and their experiences are shaped by intersecting identities, for example as a lesbian with a disability, an indigenous intersex person, or a transgender child from a religious minority.

Some questions that an NHRI might want to ask include:

- What are the most important issues facing LGB, T and/or I people in our country?
- If we are unsure, how do we find out?
- How do we record complaints and enquiries from LGB, T or I people and/or about SO, GI or SC issues?
- What does our current work and data (e.g. complaints, research, advocacy, or education) tell us about the issues we should treat as priorities?
- How can we include a focus on SOGISC issues under our various functions or practice groups (for example, through the work of our complaints team, or as part of our social media strategy)?
- What does external data and research tell us, including consultation with NGOs working on SOGISC issues?
- Are there specific issues for LGB, T or I people within other areas of work that our NHRI is prioritising? For example, monitoring places of detention, bullying in schools, or forced sterilisation?
- Are there specific issues for LGB, T or I people in our reporting on population groups including women, children, indigenous people, older persons, or people with disabilities?

### EXAMPLE

In its October 2012 submission to the UN Human Rights Council's Universal Periodic Review, the **National Human Rights Commission of Bangladesh (JAMAKON)** identified hijras and Dalits as excluded minorities that face poverty, marginalisation and discrimination. JAMAKON's Strategic Plan for 2016–2020 includes a focus on marginalised groups, including hijras and other gender and sexual minorities.

### 3.3. EMPLOYMENT AND HUMAN RESOURCE PRACTICES

The Paris Principles are the UN General Assembly endorsed international standards for effective NHRIs. They are “the test of an institution’s legitimacy and credibility”.<sup>15</sup>

The Paris Principles require that an NHRI is independent, has a broad mandate that covers all internationally recognised human rights, and is pluralist in its Commissioners and staff composition. Pluralism means that an NHRI reflects the diversity of its society. A diverse decision-making and staff body helps a NHRI to understand and work effectively on human rights affecting the society in which it operates.

Diversity and inclusion should be explicit in an NHRI’s governance documents and demonstrated in its employment practices. All Commissioners and staff should feel safe and able to participate fully and openly in the work environment. Non-discrimination policies and procedures should specifically include SO, GI and SC and other employment-related provisions should be inclusive of LGBTI people. It is important to regularly measure employee perceptions of safety, dignity, and inclusiveness at work.

#### EXAMPLE

The **New Zealand Human Rights Commission** sought accreditation by Standards New Zealand as a Rainbow-inclusive workplace, one that is safe, welcoming and inclusive for people of diverse gender identities and sexual orientations. The 12-month New Zealand Rainbow Standard/Rainbow Tick accreditation process involved Commissioners, managers and other staff. During that time SOGISC matters became visible – and an internal priority. People felt safe to ask questions and to explore what this meant to their roles and approaches. The accreditation process led to changes too, as the Commission:

- amended outdated policies
- introduced gender neutral bathroom facilities
- improved the way it gathered data against SOGISC indicators
- created a designated SOGISC section on its website, informed by external experts
- included LGBTQI lived experience in job descriptions for relevant positions, and
- included SOGISC issues in the 2016/2017 and 2017/2018 Business Plans, with an allocated budget and capacity.

Sources: [https://shop.standards.govt.nz/catalog/8200:2015\(NZS\)/scope](https://shop.standards.govt.nz/catalog/8200:2015(NZS)/scope) and [www.rainbowtick.co.nz/](http://www.rainbowtick.co.nz/).

*“If our Commission does not have the appropriate internal capability, capacity and commitment, if it is not an inclusive workplace for LGBTIQ workers, how can it fulfil its mandate as an NHRI to progress SOGISC matters?”*

New Zealand NHRI participant on the APF/UNDP SOGISC course

### 3.4. RECOGNISE HOW UNIVERSAL HUMAN RIGHTS APPLY TO LGBTI PEOPLE

The provisions of international human rights law extend in full to all people. This is the unanimous view of international human rights experts, expressed in court decisions, reports, general comments, concluding observations, and recommendations from multiple United Nations human rights mechanisms. These are documented extensively in chapter 5 of the APF/UNDP SOGISC manual.

Yet, many societies fail to recognise that universal human rights apply to LGBTI people. There can be significant social, cultural or political pressure to ignore human rights violations based on a person's SO, GI, or SC. NHRIs have a key role to play in standing up for the universality of human rights, by recognising the human rights of LGBTI people.

The *Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (the Yogyakarta Principles) are the most authoritative statement of what international human rights law obliges States to do, and not do, to promote and protect the rights of LGBT people.<sup>16</sup>

#### EXAMPLES

A number of NHRIs in the region have a SOGI or LGBT focal point. The **National Human Rights Commission of Nepal** established such a role in 2005 and has had a community intern from Blue Diamond Society within the Commission since 2012.

The Office of the **Provedor for Human Rights and Justice Timor-Leste** has also appointed a LGBT focal point.

On International Day Against Homophobia and Transphobia, 17 May 2017, the Bandhu Social Welfare Society announced it will have a full-time staff member housed within the **National Human Rights Commission of Bangladesh** (JAMAKON). This role will focus on addressing stigma, discrimination and human rights violations against sexual and gender minorities in Bangladesh.

In addition, the minority desk representative in the **Indonesian National Commission on Human Rights** (Komnas HAM) includes a specific focus on LGBT people. It has been widely known and utilised by LGBTI human rights organisations.

#### POSSIBLE ACTIONS

1. Recognise LGBTI people in your NHRI's strategic plan as priority groups for NHRI programs and activities, because of their experience of human rights violations and the risk of further violations.<sup>17</sup>
2. Appoint a staff focal point on human rights issues for LGBTI people – if possible, with a Commissioner responsible for the area – and develop a clear work plan for the focal point under the institutional strategic plan.<sup>18</sup>
3. Build the institutional capacity of the NHRI, including its members and staff, to promote and protect the human rights of LGBTI people, especially through internal training and sensitisation programs and through the recruitment of staff who have had direct personal experience in human rights work for and on behalf of LGB, T or I people.<sup>19</sup>
4. Build relationships with LGB, T and I organisations and networks to inform your work and to ensure effective communication outreach to communities of people of diverse sexual orientations, gender identities and sex characteristics.<sup>20</sup>

## 4. NHRIs' external promotion and protection work

This section of the guide discusses how NHRIs' core functions can be utilised to promote and protect the rights of LGBTI people and gives examples from actual NHRI experience in the Asia Pacific region. Many of these possible actions are drawn from an APF-UNDP Programme of Action and Support developed by NHRIs in this region at a workshop in Bangkok in 2015.<sup>21</sup> Further details and more examples can be found in Chapter 8 of the APF/UNDP SOGISC manual. Where examples are drawn from other sources, these are cited.

### 4.1. ADVICE

Advising government and parliament is the first, longest, and most detailed NHRI responsibility listed in the Paris Principles. This covers all areas of an NHRI's work and provides opportunities to identify barriers that LGBTI people face in relation to specific human rights.

A 2017 LGBTI handbook for Parliamentarians includes a useful checklist for making an initial, rapid assessment of laws, policies and bills to understand where your country currently stands on SO, GI and SC issues and the human rights of LGB, T and I people.<sup>22</sup>

*"In our right to adequate housing report with partner CSOs, we have cited exclusion of LGBT headed households in the provision of socialised housing... In our program on Business and Human Rights, we have co organised, with UNDP's Being LGBT in Asia Program, dialogues with the private sector on how together we can promote and protect diversity in the workplace."*

Commissioner Karen Gomez Dumpit  
Commission on Human Rights of the Philippines<sup>23</sup>

#### EXAMPLES

In 2015, the **Human Rights Commission of Sri Lanka** facilitated dialogue on legal gender recognition in response to a March 2015 complaint from a transgender person. The Commission proposed the introduction of a gender recognition certificate enabling transgender people to amend their sex and name details on identification documents, such as the National Identity Card. In response to the Commission's advice, in 2016 the Ministry of Health sent a circular to health services and education institutions setting out the process for issuing such gender recognition certificates. The Registrar-General instructed all registrars to change sex and name details on birth certificates, based on these certificates.



The **Australian Human Rights Commission** produced four significant SOGISC reports between 2007 and 2015. These included successfully proposing that sexual orientation, gender identity and intersex status be incorporated as prohibited grounds of discrimination in national law.<sup>24</sup>

The **National Human Rights Commission of Thailand** has recommended law reform to permit legal marriage for same-sex couples.

The **New Zealand Human Rights Commission** produced a position paper and submission supporting the introduction of marriage equality there in 2013, that defined marriage as “the union of 2 people, regardless of their sex, sexual orientation, or gender identity”.

The newly established **Human Rights Commission of Pakistan** is providing advice to the Pakistan Senate on a revised Bill to protect the rights of *khwaja siras* and other transgender people, after the Senate set aside the Transgender Persons (Protection of Rights) Bill 2017, introduced on 9 January 2017.

## POSSIBLE ACTIONS

5. Audit domestic laws, policies and programs affecting LGB, T and I people to identify any areas of inconsistency with international human rights law and advise the Government and the parliament on necessary changes to laws to ensure human rights compliance.<sup>25</sup>
6. Publicise the results of the review of laws, policies and programs and seek to build support for reform in accordance with the NHRI's recommendations.
7. Undertake research on the specific situation of intersex people, leading to good advice, protection from unnecessary medical or surgical treatment and guarantees of physical integrity, autonomy and self-determination.
8. Undertake a study of the national situation of human rights of LGBT people and prepare a report on that situation with recommendations to ensure better promotion and protection of their human rights.

## 4.2. EDUCATION AND AWARENESS RAISING

All three dimensions of human rights education<sup>26</sup> are very relevant for NHRIs' work on SOGISC issues:

- *Knowledge*: providing information about human rights
- *Values, beliefs and attitudes*: promoting a human rights culture through developing values and attitudes which uphold human rights
- *Action*: education which enables the individual to defend human rights and prevent human rights abuses.

APF and many NHRIs have prioritised dialogue with religious and community leaders as a crucial step to break down stereotypes, raise awareness of the impact of human rights violations, and build acceptance of all people's human rights.

### EXAMPLES

Since 2010, the **Human Rights Commission of Malaysia (SUHAKAM)** has adopted a step-by-step approach to addressing human rights issues related to SOGISC. This has included engaging separately with Islamic groups, with Christian and Hindu organisations, and with LGBTI individuals and groups.

In 2016, the **Ombudsman of Samoa** received complaints that media reporting of a young fa'afafine's death were unethical and insensitive, including because she was misgendered as male. The Office made a public statement explaining that, while it does not have jurisdiction to regulate the media, the article was inconsistent with Fa'a Samoa [Samoa way], particularly feavaa'i [mutual respect], and also breached the fundamental human right to dignity. The statement stressed the importance of using inclusive terminology and recommended establishing both a media code of practice and a Media Council to receive complaints about unethical journalism. Soon after the Office statement, the Media Council was appointed.

Source: [www.samoobserver.ws/en/27\\_06\\_2016/local/7922/Ombudsman-Maiava-lulai-Toma-responds.htm](http://www.samoobserver.ws/en/27_06_2016/local/7922/Ombudsman-Maiava-lulai-Toma-responds.htm).

In June 2015, the Chairperson of the **Indonesian National Commission on Human Rights (Komnas HAM)**, Hafid Abbas, called for an end to discrimination and stigma against the LGBT community and urged the Government to issue more supportive regulations. In February 2016, Commissioner Natalius Pigai said "We have to build an inclusive nation that respects the plurality of its citizens, including minority groups". Komnas HAM urged the government to introduce regulations offering protection from intimidation and bullying, and to guarantee access to education and work opportunities. Earlier in the week, Coordinating Political, Legal and Security Affairs Minister Luhut Pandjaitan asserted that the state must guarantee the rights of the LGBT community just as it would those of any Indonesian citizen.

Source: [www.asiapacificforum.net/news/komnas-ham-calls-protection-lgbt-rights/](http://www.asiapacificforum.net/news/komnas-ham-calls-protection-lgbt-rights/).

In October 2016, the **Fiji Human Rights and Anti-Discrimination Commission** participated in a workshop with the Fiji Police Force on digital recording of evidence during caution interviews and providing every suspect with legal aid assistance within the first hour of arrest. LGBTI people were involved in this first ever workshop, recognising they are one of the groups that face barriers to accessing justice.

Sources: <http://odpp.com.fj/wp-content/uploads/2016/10/ODPP-Press-Release-12-of-2016-Police-workshop-on-Digital-Recording.pdf> and Fiji NHRI participants on the APF/UNDP SOGISC course.

In 2016, the **National Human Rights Commission of Thailand** and CSOs jointly held a workshop with the media on avoiding hate speech and raising awareness about the human dignity of LGBTI people.

## POSSIBLE ACTIONS

9. Mainstream SOGISC issues in all human rights education and awareness raising activities conducted by the NHRI, especially for young people.<sup>27</sup>
10. Promote greater understanding of human rights, especially in relation to SOGISC, among LGBTI people, their families and the wider community.<sup>28</sup>
11. Provide human rights education and information about remedies for human rights violations to LGBTI people, including the role of NHRIs and complaint mechanisms, if possible in partnerships with LGB, T and I and other civil society organisations.<sup>29</sup>
12. Build the capacity of law enforcement officers, government service providers, members of the judiciary and religious leaders to interact appropriately with LGBTI people, in conjunction with LGBTI people and organisations.<sup>30</sup>
13. Develop training manuals and conduct awareness raising on issues concerning SOGISC for schools and universities, in consultation with LGBTI people and organisations.<sup>31</sup>
14. Engage with and educate the media on SOGISC issues and work with them to raise awareness about the role of NHRIs and the availability of complaint mechanisms.<sup>32</sup>
15. Reach out to parental and family associations to encourage understanding of SOGISC issues and build support systems that reach out effectively to parents and families.<sup>33</sup>
16. Provide a platform for persons of diverse SO, GI or SC to engage in dialogue with all relevant groups, including parliamentarians, the judiciary, the security/law enforcement sector, medical practitioners and community and religious leaders.<sup>34</sup>
17. Promote dialogue among community and religious leaders on the relationship between faith, religion, custom and tradition and SOGISC.<sup>35</sup>

## 4.3. MONITORING

There are two distinct types of human rights monitoring. These involve:

- assessing the human rights situation in your country, either overall or in relation to a specific treaty and the human rights issues it covers
- on-site inspection of places where there is a higher risk of human rights violations, such as prisons and other places where people are detained or forced to reside.

Both types of monitoring are opportunities to highlight how LGB, T, or I people are vulnerable to human rights violations. For example, NHRIs can monitor the situation of transgender women in male prisons, who are at high risk of sexual and physical violence.<sup>36</sup>

**Read more** in Chapter 5 of the APF/UNDP SOGISC manual about how UN treaty bodies have focused on human rights issues related to SO, GI or SC. Pages 76 and 77 in Chapter 4 include more details about the growing number of recommendations related to human rights violations against intersex people.

## EXAMPLES

Late in 2014, the **Human Rights Commission of Malaysia** (SUHAKAM) adopted the right to health in prison as one out of its two thematic priorities. SUHAKAM has established a monitoring program, including making visits to prisons and places of detention. This has included examining the treatment of transgender people in detention.

For the 2017 International Day Against Homophobia and Transphobia, the **Commission on Human Rights of the Philippines** reached out to lesbians and trans men in detention.

## POSSIBLE ACTIONS

18. Ensure that all NHRI monitoring activities include a specific focus on the human rights of LGBTI people, including, for example, in projects on trafficking, access to justice, health, housing, education and poverty reduction.<sup>37</sup>
19. Ensure that reports to international human rights mechanisms include specific discussion of the particular human rights situations of LGBTI people.
20. Undertake special monitoring projects, in conjunction with LGB, T and I organisations, on the experience of human rights violations and discrimination on the basis of SOGISC, including the collection of disaggregated data on perpetrators, victims and impact of such violence.<sup>38</sup>
21. Identify and monitor the specific circumstances of LGBTI people in detention or in restricted residence, including prisons, remand centres, police cells, hospitals, children's homes and schools, looking in particular at actual or potential assaults, discriminatory and abusive treatment, the appropriateness of assignment to gender-specific facilities, adequate access to appropriate health care services and protection of personal privacy.<sup>39</sup>
22. Develop guidelines on best practices for LGBTI people in these and other kinds of places of detention and restricted residence, based on South-South exchanges.<sup>40</sup>

## 4.4. COMPLAINT HANDLING

All NHRIs in the Asia Pacific region have “quasi-judicial” or conciliation responsibilities to receive, investigate and resolve human rights complaints.<sup>41</sup> Some NHRIs have developed resources explaining how their complaints process can be used to address the types of human rights violations experienced by LGBTI people. Others track the number of SO, GI and SC complaints, including outcomes achieved. Complaints forms will be more accessible to trans and intersex people if they enable complainants to specify what name and gender marker they wish to have recorded, whether or not those details match their official identification documents.

## EXAMPLES

Due to the difficulties that *hijras* and LGBTI people face in knowing their rights and how to lodge complaints, in 2015 the **National Human Rights Commission of Bangladesh** (JAMAKON) produced a manual for gender and sexual minorities. It describes the types of human rights violations that LGBTI people may experience, that they can bring to the Commission. These included police physically or sexually assaulting LGBTI people, a hospital refusing to treat a *hijra*, police arresting a man who looks feminine, or a landlord evicting someone because of their sexual orientation. JAMAKON has received complaints from *hijras* about police harassment and employment discrimination, and from *hijras* and transgender men trying to amend their gender marker on official documents.



The **Commission on Human Rights of the Philippines**, has a mandate to take on gender-based complaints under the Magna Carta of Women. The Commission has extended this mandate to include cases based on sexual orientation, gender identity or gender expression and has developed investigation protocols for handling LGBTI cases. These are based on the Yogyakarta Principles and state “respect for sexual rights, sexual orientation and gender identity are integral to the realisation of equality between men and women”.

*Source:* Speech by Commissioner Karen Gomez Dumpit to the APF/UNDP *Conference on the Yogyakarta Principles*, April 2017, Bangkok.

## POSSIBLE ACTIONS

23. Train NHRI members and staff to be sensitive and responsive to the needs of victims of human rights violations on the basis of SOGISC and ensure that these victims have access to members and staff who have undergone this training.
24. Identify an NHRI complaint handling officer who will be a liaison point for LGBTI complainants and who will be responsible for reaching out to the diverse LGB, T and I communities through their organisations and through community and legal centres and other NGOs connected with the LGB, T and I communities.
25. Provide an accessible and safe space for LGBTI people in all NHRI offices, where their rights are protected and promoted and their SO, GI and SC are respected.<sup>42</sup>
26. Provide information, in accessible and understandable languages and formats, to LGBTI individuals and organisations to assist victims of human rights violations to lodge complaints with the NHRI.
27. Ensure that the processes for complaint handling, including forms to be completed, are respectful of the particular circumstances of LGBTI victims of human rights violations and are appropriate for them, including by permitting complainants to identify themselves as they wish.
28. Develop procedures to identify and act on its own initiative to investigate human rights violations based on SOGISC, through regular engagement with different LGB, T and I organisations and other civil society organisations.
29. Promote the appointment of a focal point on human rights issues in relation to SOGISC in each government ministry, department or agency that has a significant number of complaints of human rights violations based on SOGISC, as a means of encouraging speedy resolution of complaints and action to prevent future violations.
30. Maintain a database of complaints of human rights violations based on SOGISC, with the ability to disaggregate the data according to different criteria, to enable the analysis and reporting of the human rights situation of LGBTI people generally and according to status.

## 4.5. COURT INTERVENTIONS AND MONITORING

Many NHRIs have the power to intervene in court proceedings and present submissions on human rights law, as of right or as a friend of the court. Often courts are not familiar with SOGISC terminology, the experiences of LGBTI people, and the relevant human rights standards. As national experts on human rights law, NHRIs play a valuable role by sharing that expertise and experience in court proceedings. This might include making submissions in relevant court cases to ensure that domestic law operates in accordance with international human rights law, including its application to SOGISC issues as set out in the Yogyakarta Principles.

By consulting with LGBTI organisations and human rights lawyers, and monitoring cases coming before the courts, NHRIs can identify opportunities to make strategic interventions. On other occasions, NHRIs may attend to observe cases of concern, indicating to the court that the case raises important human rights concerns.

It can be difficult for an NHRI to track cases when specific courts are not open to the public or decisions are not published. For example, this may be the situation for Family Court cases about LGB, T or I children, including if judicial approval is needed to authorise surgeries on intersex infants or to amend a transgender person's gender marker on official documents. In those circumstances, NHRIs might use their advisory function to provide information on these issues for judicial training.

### EXAMPLES

In 2011, the **National Human Rights Commission of Korea** delivered an opinion to the Constitutional Court challenging, as unconstitutional, a provision in the Military Criminal Law that criminalises same-sex conduct. The Commission has also recommended the enactment of a comprehensive anti-discrimination law that includes SO and GI as prohibited grounds of discrimination.

The **Human Rights Commission of Malaysia (SUHAKAM)** attended Federal Court proceedings in 2015 in relation to a case challenging the criminalisation of so-called 'female impersonation' by transgender women. SUHAKAM attended as an observer, monitoring the case.

The **Australia Human Rights Commission** intervened in the High Court of Australia, in a legal gender recognition case. The High Court's finding, consistent with the Commission's submissions, was that a person's legal gender should be based on social perceptions and not depend on evidence of the person's physical (bodily) state.

### POSSIBLE ACTIONS

31. Monitor cases coming before the courts that raise human rights issues concerning SOGISC and seek to intervene in appropriate cases where the NHRI's expertise would assist the court to understand the human rights issues and the requirements of human rights law.

## 4.6. ADVOCACY

An NHRI advocates for the acceptance and implementation of its advice, including the results of its investigations, monitoring and national inquiries. Advocacy is also educative and raises awareness about the NHRI, its work and human rights generally. It can be directed towards any sectors of society that affect the human rights of LGBTI people. For example, this might include focusing on law reform; guidelines for health professionals, schools or employers; implementation of international human rights obligations; or including SOGISC issues in national action plans.

## EXAMPLES

The **Commission on Human Rights of the Philippines** has developed close working relationships with LGB and T organisations at the national and local levels since the early 2000s when it was challenged to monitor hate crimes against LGBT people. It investigated and monitored the high-profile murder of a transgender woman, Jennifer Laude, in 2014. Under its legal assistance and protection mandate, the Commission has advocated for local anti-discrimination ordinances and for the passage of a Comprehensive Anti-Discrimination law. It recently co-founded a ‘Stop the discrimination’ coalition with CSO partners.

*Source:* Speech by Commissioner Karen Gomez Dumpit to the APF/UNDP *Conference on the Yogyakarta Principles*, April 2017, Bangkok. At: <http://news.abs-cbn.com/news/03/03/17/house-rights-panel-to-consolidate-8-anti-discrimination-bills>.

The **Indonesian National Commission on Human Rights** (Komnas HAM) was one of the bodies that successfully advocated for Alter Hofan, an intersex person who was charged with document fraud after amending his identity documents to male, without going through a legal process. He was imprisoned but then acquitted because of his intersex status.

In 2013, the UN Special Rapporteur on Myanmar recommended action by both the government and NHRI after 12 transgender women and gay men in Mandalay were verbally, sexually and physically assaulted by police officers who arrested them on allegations of creating a public nuisance. The **Myanmar National Human Rights Commission** referred the case directly to the chief of police but police did not release any information about investigation of these complaints.

*Source:* <https://www.hrw.org/news/2015/09/02/letter-mandalay-chief-minister-u-ye-myint>.

## POSSIBLE ACTIONS

The APF-UNDP Programme of Action and Support identifies recommendations related to an NHRI's advocacy work, including through partnership with SOGI communities,<sup>43</sup> engagement with international, regional and sub-regional mechanisms<sup>44</sup> or sub-regional networks<sup>45</sup>, or by changing attitudes or behaviours.<sup>46</sup> These are outlined below.

32. Include specific strategies for advocacy for the human rights of LGB, T and I people in the NHRI's strategic and activity plans.
33. Include in all NHRI projects and activities dealing with the human rights of LGBTI people an advocacy strategy to promote acceptance and implementation of recommendations for change.
34. Engage LGB, T and I organisations, other civil society organisations and allies in advocacy of the NHRI's reports and recommendations relevant to the human rights of LGBTI people.
35. Advocate for specific law reform initiatives to provide better promotion and protection of the human rights of LGBTI people, giving priority to laws:
  - to remove criminal penalties associated with SOGISC
  - to prevent forced or involuntary surgical and other medical procedures on intersex or LGB or T people, including procedures purporting to impose a specific sex or to change a person's SO or GI
  - to grant legal gender recognition to the diverse identities and statuses of transgender and intersex people according to their wishes
  - to protect LGBT people from violence and mistreatment and
  - to prohibit discrimination based on SOGISC.
36. Advocate with specific government ministries, departments and agencies for implementation of policies and programs for the better promotion and protection of the human rights of LGBTI people.



37. Engage with business and professional organisations to encourage them to understand the application of human rights law to issues relating to SOGISC and to implement policies and programs for the better promotion and protection of the human rights of LGBTI people, in cooperation with LGB, T and I organisations.

## 4.7. COOPERATION AND ENGAGEMENT

The Paris Principles require that NHRIs work in cooperation with all sectors of society, including other state institutions and NGOs. They must also preserve their independence. An NHRI is neither part of government nor an NGO, but needs to work closely with both. If an NHRI's independence is trusted, it can help to promote dialogue between government, judiciary and civil society.

It is part of an NHRI's role to reach out to organisations working on human rights issues for intersex, transgender, lesbian, gay, and/or bisexual people. NHRIs and NGOs in this region have shared these ideas about ways that they can work together on SOGISC issues.<sup>47</sup>

### NHRIs AND NGOs WORKING WELL TOGETHER

#### LEARN MORE ABOUT EACH OTHER

- ✓ Understand and respect each other's distinct roles and responsibilities
- ✓ Have clear information for NGOs explaining the NHRI's legal mandate and what it can do
- ✓ Build trust, by sharing your organisations' experiences, priorities, and what it can and cannot contribute
- ✓ Be open to learning: It's OK to say, "I don't know"
- ✓ Know who is responsible for making decisions and identify preferred options for raising concerns and resolving any complaints

#### COLLABORATE

- ✓ Proactively establish a working relationship, not solely in reaction to the NHRI's or CSO's priorities or deadlines
- ✓ Plan events in advance with sufficient notice
- ✓ Put time and resources into creating genuine and collaborative working relationships
- ✓ Create dedicated ways for communicating with each other e.g. focal points
- ✓ Ensure there are multiple points of contact with the NHRI and CSOs so that, when people leave, those relationships are not lost
- ✓ Be accountable for commitments made to each other
- ✓ Give constructive feedback about ways to keep improving your working relationship
- ✓ Formalise this working relationship, for example by incorporating SOGISC issues into the NHRI's Strategic Plan and by CSOs prioritising their work with the NHRI
- ✓ NHRIs maintain their independence by collaborating with a diverse range of CSO stakeholders
- ✗ Do not assume that outreach to one individual or group amounts to community consultation



**WORK TOGETHER**

- ✓ Share information, reports and contacts
- ✓ Involve NHRI and NGO representatives in each other's platforms (e.g. internships, training, media)
- ✓ Be open to considering how resources can be shared
- ✓ Jointly create and conduct sensitisation and capacity building workshops
- ✓ Develop tools for documenting human rights violations
- ✓ Identify opportunities for joint interventions, based on the NHRI's and CSO's distinct roles
- ✓ Connect CSOs to decision-making processes
- ✓ Enable CSOs to have the opportunity to influence laws and policies that affect LGB, T and I people's lives
- ✓ Jointly monitor progress on SOGISC human rights, including in response to recommendations from the UPR, Treaty Bodies, and other human rights mechanisms
- ✓ Be courageous

NHRIs broker relationships, where necessary, between LGB, T and I communities and decision-makers such as government, and other stakeholders including business, indigenous, or religious leaders and other human rights organisations.

In addition, NHRIs in this region collaborate to implement the APF-UNDP Programme of Action and Support on human rights issues for LGBTI people. NHRIs also work internationally, cooperating with and supporting the work of UN bodies and mechanisms. Examples include:

- submitting parallel or shadow reports to the Universal Periodic Review, treaty monitoring bodies, or special procedure mechanisms
- making statements in relation to those debates
- facilitating country visits by UN experts or
- monitoring and promoting the implementation of relevant UN recommendations.

In 2016, the UN Human Rights Council appointed the first Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. Mr Vitit Muntarbhorn is a law professor based in Thailand. This is an important opportunity for NHRIs from this region to engage in dialogue with this Independent Expert to ensure that the human rights challenges faced by LGBT people in this region are addressed in his work.

**EXAMPLES**

The **Human Rights Commission of Malaysia (SUHAKAM)** partnered with NGOs such as Justice for Sisters and SEED to conduct a study on discrimination against the transgender persons based in Kuala Lumpur and Selangor in relation to right to employment, healthcare, education, housing and dignity.

In April 2016, the **New Zealand Human Rights Commission** worked closely with NGOs to facilitate a multi-sector roundtable on so-called 'sex normalising' surgeries on intersex infants and children. The Roundtable identified key actions that were included in the Commission's supplementary submission ([www.hrc.co.nz/files/6814/7426/0090/Supplementary\\_Report\\_of\\_NZHRC\\_for\\_CRC\\_73rd\\_session\\_NZ.pdf](http://www.hrc.co.nz/files/6814/7426/0090/Supplementary_Report_of_NZHRC_for_CRC_73rd_session_NZ.pdf)) to the UN Committee on the Rights of the Child (CRC) in August 2016. The Commission met with the CRC in Geneva, and relied on inside knowledge and personal stories from intersex people and their families.



The CRC delivered strong recommendations that the NHRI, CSOs and health professionals are using as the basis for their joint ongoing discussions with Government to address these human rights violations.

The **Provedor for Human Rights and Justice Timor-Leste** has created a Memorandum of Understanding with National NGO (CODIVA) to implement Human Rights Training to Police and community leaders, that includes a focus on SOGIE.

After a consultation workshop with over 80 LGBTI participants in 2010, the **National Human Rights Commission of Mongolia** trained 71 police officers on SOGI issues, collected data on human rights violations against LGBT people, created website resources, produced a brochure on making complaints to the Commission, and used public service announcements on television to call for implementation of UN recommendations concerning sexual minorities. Together with the LGBT Centre, the Commission included LGBT people in a human rights survey and tabled a report in Parliament with a chapter focused on SOGI human rights issues. The Parliament Standing Committee on Legal Affairs passed a Resolution calling on the government to implement the UPR and Committee Against Torture recommendations relating to LGBT people.

The **Human Rights Commission of Sri Lanka** has formed a LGBTIQ sub-committee where NGOs and individuals can raise difficulties they face and potential solutions. These issues can then be raised with the sectoral subcommittees (for example on health or education) that involve representatives from relevant government ministries.

The **Commission on Human Rights of the Philippines**, as part of its Business and Human Rights work, co organised private sector dialogues with UNDP's *Being LGBTI in Asia* Program on promoting and protecting diversity in the workplace.

## POSSIBLE ACTIONS

38. Build and maintain collaborative relationships with diverse LGB, T and I organisations and networks to inform the work of the NHRI and to ensure an effective communication outreach to LGBTI people.<sup>48</sup>
39. Ensure joint strategising between the NHRI and LGB, T and I organisations in developing NHRI strategic and activity plans on human rights issues relating LGBTI people.
40. Develop broader advocacy coalitions with diverse LGB, T and I organisations and generalist human rights organisations to enable joint efforts on projects to promote and protect the human rights of LGBTI people.
41. Arrange regular meetings for exchange of views, information and plans between the NHRI's senior leaders and LGB, T and I organisations.
42. Include information about the human rights situation of LGBTI people in parallel or shadow reports to the Universal Periodic Review, special procedures and treaty monitoring bodies.
43. Make statements during debates before review bodies and the Human Rights Council on human rights relating to SO, GI and SC.
44. Encourage country visits and reports by United Nations experts to examine human rights issues in relation to SOGISC, including those by special procedure mandate holders, treaty monitoring bodies, fact-finding missions and commissions of inquiry.
45. Promote and monitor the implementation of recommendations from the international human rights system that deal with human rights in relation to SOGISC.



46. Implement recommendations of the APF-UNDP Programme of Action and Support and participate in other APF programs and activities concerning human rights in relation to SOGISC.
47. Share with other NHRIs in other regions, through the Global Alliance of National Human Rights Institutions and directly, the experience of NHRIs in the Asia Pacific in working to promote and protect the human rights of LGBTI people and encourage those other NHRIs to extend their own work on these issues.

## 4.8. NATIONAL INQUIRIES

A national inquiry is a transparent investigation into a systemic human rights problem, where the general public, people directly affected and other experts are invited to participate.<sup>49</sup> The human rights situations of LGB, T and I people are usually the result of deeply imbedded cultural, political and social traditions. These long histories of systemic discrimination are ideal for a national inquiry process that combines public education and awareness raising, investigation, evidence, analysis and recommendations.

A public inquiry brings considerable attention to an issue and the communities most directly affected. Therefore, it is important to consult closely with relevant NGOs before deciding the timing and scope of any such inquiry. An NHRI must ensure adequate protection for witnesses and others making submissions. If necessary, their names and any identifying information should remain confidential.

### EXAMPLES

The **Australian Human Rights Commission** commenced its *Same-sex: same entitlements* inquiry in 2006 and reported in 2007. The inquiry involved discussion papers, research, a blog, consultations, seven formal public hearings, 18 community forums and 680 submissions, before producing its final report and recommendations. In 2008, the Australian parliament enacted laws to implement the Commission's recommendations, amending 84 discriminatory laws. It was effective because there was comprehensive community consultation using a variety of different methods, in-depth research that created a persuasive evidence base, considered media engagement and a focus on practical areas for reform.

Sources: APF SOGISC manual and NHRI participants on the APF/UNDP SOGISC course.

The **New Zealand Human Rights Commission** undertook a Transgender Inquiry in 2006 and 2007, publishing its report in January 2008. The Commission built strong relationships with transgender communities and their allies, documented government agencies' responses to the issues raised in submissions, and recommended five priority areas where change was needed. Once the Inquiry's report was released, the Commission implemented a public education programme, working alongside local communities and a touring art exhibition. Two national human rights training meetings were held with transgender people, culminating in dialogues with government officials. While there has been very limited political support for recommended legislative changes, significant progress has been made in changing public attitudes and some policies including simplified processes for amending gender markers on passports and driver licenses, based on self-defined identity.

Sources: New Zealand Human Rights Commission (2010), *Human Rights in New Zealand 2010, Chapter 19 – rights of sexual and gender minorities*; Aotearoa/New Zealand's SOGII UPR Coalition (2014), *Submission to New Zealand's second Universal Periodic Review*. At: [www.hrc.co.nz/files/7014/2406/3081/SOGII-Coalition\\_joint-UPR-submission\\_New-Zealand\\_Jan-Feb-2014-with-appendices.doc](http://www.hrc.co.nz/files/7014/2406/3081/SOGII-Coalition_joint-UPR-submission_New-Zealand_Jan-Feb-2014-with-appendices.doc).

## **POSSIBLE ACTIONS**

- 48.** Undertake a consultation with LGB, T and I organisations and other human rights civil society organisations to determine the desirability and appropriateness of conducting a national inquiry into one or more human rights issues relating to SOGISC.
- 49.** Consider what human rights issues affecting LGBTI people are most appropriately examined through a national inquiry process, with the prospect of increasing public awareness and understanding of the issues and public support for recommendations to address the issues.
- 50.** Undertake a national inquiry if the external consultations and internal deliberations establish support for the appropriateness and likely effectiveness of such an inquiry into human rights issues relating to SO, GI and SC.

## 5. Conclusion

The first step for NHRIs is to recognise that lesbian, gay, bisexual, transgender and intersex people, like other people, are entitled to the full range of human rights. Yet, human rights violations based on sexual orientation, gender identity and sex characteristics occur in every country, and people are at risk of violations based on these attributes. NHRIs therefore have a responsibility to respond with effective action to promote and protect the human rights of LGB, T and I people. They can do so through activities relating to each of their key functions: advice, education and awareness raising, monitoring, complaint handling, court interventions, advocacy, and cooperation and engagement both domestically and internationally. The national inquiry process can be a very effective mechanism for NHRIs to address the systemic nature of such human rights violations. This mainstreaming guide provides many suggested actions, and shares examples from NHRIs across this region about ways to start or extend this work.

The APF is committed to supporting its member institutions in the promotion and protection of the human rights of LGB, T and I people. The APF welcomes any case studies or information that NHRIs may wish to submit in relation to their work in these areas. The APF has a dedicated website page and NHRI activities can also be posted here: [www.asiapacificforum.net/human-rights/sogisc/](http://www.asiapacificforum.net/human-rights/sogisc/)

If your NHRI wishes to submit any studies, court cases, reports, photographs, videos or updates in relation to its SOGISC work please forward them to:

Pip Dargan  
Deputy Director and Gender Focal Point  
Asia Pacific Forum of National Human Rights Institutions  
E: [pipdargan@asiapacificforum.net](mailto:pipdargan@asiapacificforum.net)

## ENDNOTES

- 1 Asia Pacific Forum of National Human Rights Institutions and the United Nations Development Programme (June 2016), *Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics: A Manual for National Human Rights Institutions*. At: [www.asiapacificforum.net/resources/manual-sogi-and-sex-characteristics/](http://www.asiapacificforum.net/resources/manual-sogi-and-sex-characteristics/).
- 2 A few examples from this region are *hijra* and *khwaja sira* from South Asia, *waria* and *kathoey* from South East Asia, and *fa'afafine*, and *takatāpui* from the Pacific.
- 3 Note: This resource was developed before the term 'sex characteristics' was widely used, and uses 'sex' instead.
- 4 Report of the Economic and Social Council for 1997 (A/52/3, 18 September 1997).
- 5 At: [www.asiapacificforum.net/resources/manual-on-women-and-girls/](http://www.asiapacificforum.net/resources/manual-on-women-and-girls/).
- 6 OHCHR, *Fact Sheet: Intersex*, 2015. At: [www.unfe.org/intersex-awareness/](http://www.unfe.org/intersex-awareness/).
- 7 CRC/C/NPL/CO/3-5, pp. 10-11, paras. 41-42; and CRC/C/NZL/CO/5, pp. 4-5 and 8, paras 15 and 25.
- 8 CAT/C/AUS/QPR/6. See also: <https://oii.org.au/31079/un-cat-loipr-2016/>.
- 9 CAT/C/NZL/QPR/7, p 6, para 32. At: [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/NZL/CAT\\_C\\_NZL\\_QPR\\_7\\_24920\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/NZL/CAT_C_NZL_QPR_7_24920_E.pdf).
- 10 At: [www.hrc.co.nz/news/intersex-roundtable-report/](http://www.hrc.co.nz/news/intersex-roundtable-report/).
- 11 At: [www.humanrights.gov.au/news/stories/intersex-rights-are-human-rights](http://www.humanrights.gov.au/news/stories/intersex-rights-are-human-rights).
- 12 International Gay and Lesbian Human Rights Commission [now Outright Action International] (2014) *Violence: Through the lens of lesbians, bisexual women and trans people in Asia*. At: [www.outrightinternational.org/content/violence-through-lens-lbt-people-asia](http://www.outrightinternational.org/content/violence-through-lens-lbt-people-asia).
- 13 Sections 67 and 68, *Crimes Act 2013*.
- 14 Section 71, *Crimes Act 2013*.
- 15 OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 7. Read more in Chapter 1 of the APF's *A Manual on National Human Rights Institutions*. At: [www.asiapacificforum.net/resources/manual-on-nhris/](http://www.asiapacificforum.net/resources/manual-on-nhris/).
- 16 The Yogyakarta Principles are set out in full in Appendix 4 of the APF SOGISC manual. They are available in all six UN languages (Arabic, Chinese, English, French, Spanish and Russian). At: [www.yogyakartaprinciples.org/](http://www.yogyakartaprinciples.org/).
- 17 APF and UNDP *Programme of Action and Support*, Recommendation 5, refers to the visibility and explicit inclusion of SOGI in internal planning processes.
- 18 APF and UNDP *Programme of Action and Support*, Recommendation 2.
- 19 APF and UNDP *Programme of Action and Support*, Recommendation 1.
- 20 APF and UNDP *Programme of Action and Support*, Recommendation 3.
- 21 APF and UNDP, *Programme of Action and Support: The role of national human rights institutions in promoting and protecting human rights in relation to sexual orientations and gender identity including health rights in the Asia and the Pacific* (2015). At: [www.asiapacificforum.net/resources/programme-action-and-support-nhri-sogi-2015/](http://www.asiapacificforum.net/resources/programme-action-and-support-nhri-sogi-2015/). The Programme of Action and Support is also reproduced in Section 6 of the APF/UNDP SOGISC manual. It did not use the term sex characteristics to highlight the specific experiences of intersex people. The priority actions in this section have been expanded to include a focus on the human rights of intersex people too.
- 22 UNDP/PGA (2017). *Advancing the Human Rights and Inclusion of LGBTI People: A Handbook for Parliamentarians*, pages 28 and 29. At: [www.undp.org/content/undp/en/home/librarypage/democratic-governance/parliamentary\\_development/advancing-the-human-rights-and-inclusion-of-lgbti-people--a-hand.html](http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/parliamentary_development/advancing-the-human-rights-and-inclusion-of-lgbti-people--a-hand.html).
- 23 Speech to the Asia Pacific Forum and United Nations Development Programme *Conference on the Yogyakarta Principles: What we have learnt and where to now?*, 25-26 April 2017, Bangkok, Thailand.
- 24 For details, see the extensive case study on pages 191-193 of the APF manual.
- 25 APF and UNDP *Programme of Action and Support*, Recommendation 8.
- 26 Asia Pacific Forum of National Human Rights Institutions (2013) *Human Rights Education: A Manual for National Human Rights Institutions*.
- 27 APF and UNDP *Programme of Action and Support*, Recommendation 16.
- 28 APF and UNDP *Programme of Action and Support*, Recommendation 13.
- 29 APF and UNDP *Programme of Action and Support*, Recommendation 14.
- 30 APF and UNDP *Programme of Action and Support*, Recommendation 15.
- 31 APF and UNDP *Programme of Action and Support*, Recommendation 17.
- 32 APF and UNDP *Programme of Action and Support*, Recommendation 18.
- 33 APF and UNDP *Programme of Action and Support*, Recommendation 19.

- 34 APF and UNDP *Programme of Action and Support*, Recommendation 11.
- 35 APF and UNDP *Programme of Action and Support*, Recommendation 12.
- 36 The Association for the Prevention of Torture's website collates resources on detention issues for groups at risk, including LGBTI people. At: [www.apr.ch/detention-focus/en/vulnerable\\_groups/6](http://www.apr.ch/detention-focus/en/vulnerable_groups/6).
- 37 APF and UNDP *Programme of Action and Support*, Recommendation 20.
- 38 APF and UNDP *Programme of Action and Support*, Recommendations 21 and 24.
- 39 APF and UNDP *Programme of Action and Support*, Recommendation 22.
- 40 APF and UNDP *Programme of Action and Support*, Recommendation 23.
- 41 Read more in Chapter 15 of the APF's *Manual on National Human Rights Institutions*. At: [www.asiapacificforum.net/media/resource\\_file/A\\_Manual\\_on\\_NHRIs.pdf](http://www.asiapacificforum.net/media/resource_file/A_Manual_on_NHRIs.pdf).
- 42 See also APF and UNDP *Programme of Action and Support*, Recommendation 1.
- 43 APF and UNDP *Programme of Action and Support*, Recommendation 25.
- 44 APF and UNDP *Programme of Action and Support*, Recommendation 28.
- 45 APF and UNDP *Programme of Action and Support*, Recommendation 29.
- 46 APF and UNDP *Programme of Action and Support*, Recommendation 31.
- 47 *Source*: feedback from the APF/UNDP SOGISC workshops with NHRIs and NGOs. Read more about making your NHRI accessible to NGOs in Chapter 6 of the APF's and OHCHR's manual on *The United Nations Declaration on the Rights of Indigenous Peoples*. At: [www.asiapacificforum.net/resources/undrip-guide-for-nhris/](http://www.asiapacificforum.net/resources/undrip-guide-for-nhris/).
- 48 APF and UNDP *Programme of Action and Support*, Recommendation 3.
- 49 See APF, *Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation*, 2012. At: [www.asiapacificforum.net/resources/manual-conducting-a-national-inquiry/](http://www.asiapacificforum.net/resources/manual-conducting-a-national-inquiry/).





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