



Asia-Pacific Regional Seminar on

# Human Rights, Sexual Orientation and Gender Identity

22nd - 23rd March 2013 | Kathmandu, Nepal



## INTRODUCTION

**Let's discuss this ...** The first ever United Nations (UN) resolution on 'Human Rights, Sexual Orientation and Gender Identity (SOGI)' presented by South Africa in June 2011 built upon more than a decade of efforts by civil society organizations, human rights defenders, state and UN actors to promote awareness and respect for the rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons. In order to ensure renewed and ongoing support for the UN (specifically, the Human Rights Council's) resolution on sexual orientation and gender identity, a series of cross-regional dialogues were organized. The Asia-Pacific Regional Seminar on Human Rights, Sexual Orientation and Gender Identity brought together 150 delegates from 24 countries, including representatives from governments, the United Nations, civil society organizations, and LGBTI groups. The seminar, held in Kathmandu, Nepal on March 22<sup>nd</sup> and 23<sup>rd</sup> 2013 was a state level convening that provided an opportunity to sensitize various actors on LGBTI issues, document LGBTI voices for an educational video and strengthen local and regional LGBTI networks through cross-country exchanges about challenges, progress and successful initiatives to advance understanding of LGBTI issues.

## DISCUSSION HIGHLIGHTS

### There are human rights violations at different levels...

LGBTI people are susceptible to a wide gamut of human rights violations. In testimonial after testimonial as well as panel presentation and breakout groups, we heard that law enforcement agencies, the general public, conservative religious groups, even immediate family members are violating LGBTI people's rights to security, privacy, non-discrimination, freedom of expression, freedom of peaceful assembly, access to health, housing, work and education and in essence, to a life of dignity and respect.

*"An animal might get some love, but a third gender person doesn't get any love. Don't I have the right to live a normal life? Who will look after us if we are excluded by our families, societies and even states? I want to live."* - Anik Rana Magar, third gender activist, Blue Diamond Society, Nepal

**Discriminatory laws and law enforcement practices:** Discriminatory laws, such as British-era colonial provisions penalizing acts "against the order of nature", criminalize people with non-conforming sexual orientation and gender identity or gender expression across much of the Asia Pacific region. Public offence, impersonation, and morality statutes are also used to stigmatize and harass LGBTI people. The presence of these laws makes LGBTI people vulnerable to frequent physical, mental and sexual harassment and assaults, including custodial rape by the police. Throughout the region, there have been innumerable cases of LGBTI people being arbitrarily detained by police. Participants also reported cases where police deliberately misuse anti-trafficking laws to charge partners of LGBTI people with human trafficking because the partner's families object to their relationships. Many existing anti-rape laws have narrow definitions of rape and do not redress the violations that LGBTI people suffer – from "corrective" rape by men purportedly seeking to change lesbians into heterosexual women or punitive rape against LGBTI people. Reporting rape is out of the question for many LGBTI people since it involves revealing sexual orientation or gender identity, which could result in family recriminations, criminalization for being lesbian, gay, bisexual or transgender, or negative media publicity and sensationalization that end up re-victimizing people who have turned to the legal system for help. Transgender people in many Asia Pacific countries are still struggling to be legally recognized, and are denied the right to assert their identity in legal documents including citizenship documents (inducing them to live like aliens in their own home countries) and travel documents (which makes them even more susceptible to harassment during travel).

*"These provisions cause many LGBTI people to live in fear of the law, rather than under its protection."* -Tripti Tandon, Lawyers Collective, India

**Denied access to health, education and work, reducing prospects of betterment:** Accessing non-discriminatory health services is a major challenge for the LGBTI community in most countries in this region, primarily because health professionals do not recognize the specific and unique health care issues related to the sexual and reproductive health of the LGBTI community. In addition, services such as sex reassignment surgery are extremely expensive and beyond the reach of many transgender people, particularly for those who already

live in poverty due to multiple discrimination and the cross-cutting nature of exclusion by society. Non-acceptance of LGBTI people denies many LGBTI people access to education while those who are in school often have to endure bullying, stigmatization and also violent disciplining, in some instances causing young LGBTI persons to take their own lives. Participants also reported many incidents of being fired from their jobs or denied employment because of their sexual orientation and gender identity, creating a vicious cycle of discrimination, poverty, violence, and criminalization. This has barred LGBTI groups from owning and inheriting property as well.

**Patriarchal society and misuse of culture and religion resulting in family and society-induced violence:** Germaine Leonin from the Philippines addressed the root cause of discrimination: "Part of this discrimination comes from religious beliefs, cultural practices and the patriarchal nature of our society... [homosexuality] is predominantly seen as a western issue." Homosexuality, cross-dressing and any non-conforming sexual orientation or gender expression are often preached as deviant, sinful, immoral, and against religious teachings. Due to this, LGBTI people are not only prevented from practicing their religion, but are also subjected to violence and hate crimes by religious fundamentalist groups, some of whom have state endorsement and the support of politically conservative government officials. Elizabeth Kerekere from New Zealand underlines: "It is not about being able to live in our culture in spite of our sexual orientation, it is about being able to live in our culture in accordance with our sexual orientation." In addition, lesbian women are subjected to violence in the home such as forced marriages, physical violence and even 'corrective rape'. Participants recalled false allegations of theft and robbery filed against them by their own family members and family members of their partners. As a result, many LGBTI people, especially the younger generation, experience depression and other mental health issues. Intersex people talked about 'corrective' surgery based on parental consent without intersex individuals themselves being allowed the opportunity to affirm their own identities.

## **And the challenges to overcome these violations are as tall as the mountains ...**

Discriminatory institutional structures and legal frameworks and the failure to understand the complexity of sexual orientations and gender identities has further added fuel to the fire of societal exclusion of LGBTI peoples. Lack of sensitivity for LGBTI concerns, whether by family or state actors, and the concentration of LGBTI support services and advocacy in urban centers posed overarching challenges, specifically when there are human rights violations. Of particular concern were:

**Ensuring compliance with international human rights law at the national and local levels** – which is a challenge for three reasons. First, national and state level agencies often lack capacity – they are unaware, do not

understand, or are resistant to LGBTI issues. Second, there is lack of coordination amongst various agencies within the state such that although the treaty signatories are supportive of LGBTI issues, the law enforcement agencies may not be aware of the treaties or the issues. Third, most states lack independent agencies that can truly assess the successful compliance with and implementation of international human rights treaties and UN resolutions relating to sexual orientation and gender identity. This makes it difficult to hold states accountable.

**Contextualizing LGBTI community within religion, culture and tradition at the local level** is another severe challenge that echoed across sub regions. Joey from Tonga reiterated this sentiment, "We have a right to claim the culture we are born into. How come we are 'other'?" Gender, unfortunately, is largely interpreted as a binary concept with only two genders -- male and female despite the fact that transgender, cross-dressing, and gender non-conforming people have always been an integral part of Asia-Pacific histories and cultures. Many Asian and Pacific government leaders inaccurately label homosexuality as a 'western' concept, overlooking inclusive traditions in indigenous cultures and communities. Colonization and the wave of Christianity that followed also played a significant role in the stigmatization of homosexuality and transgenderism. Some Asia Pacific governments have marginalized LGBTI communities by promoting a narrow conception of 'Asian Values' emphasizing homogenous not diverse societies where the only acceptable norm is heterosexuality.

**Diversity within the LGBTI community and a multiple identity environment resulting in multiple levels of discrimination** was identified as another significant challenge.

***We have multiple identities. We are not just LGBTI people in a vacuum but also defined by our culture, ethnicity, age, economic background, and so on... and we experience multiple, intersecting discrimination. Our issues are crosscutting issues."** - Grace Poore, IGLHRC*

LGBTI people are often lumped together under a single umbrella term, as if one-size fits all. Terminology such as 'transgender' is insufficient to describe the uniqueness and diversity of gender identities. However, as participants pointed out, each sub group has unique issues. This diversity raises challenges on two levels - first, there is an imposed "unity" from the outside and failure to recognize differences within the community, which further exacerbates the impact of discriminatory practices. Second, policies that try to address the community as a whole often overshadow the particular priorities, challenges and needs of each group. In addition, LGBTI people in the Asia Pacific belong to different ethnic, racial or economic groups or have different social class. This multiple identity environment brings multiple levels of discrimination.

**Lack of international mechanisms dedicated to LGBTI issues** was identified as another challenge where

participants specifically pointed out the lack of a Special Procedure or other mechanism within the UN that is dedicated to sexual orientation and gender identity. Discrimination operates within the UN, such as partners of LGBTI UN staff not getting the same benefits as partners of heterosexual UN staff. Several participants highlighted a “disconnect” between debates at the UN and realities on the ground.

In addition, participants raised concerns about the sustainability of LGBTI movements due to **lack of fund-raising opportunities** since the community still faces social exclusion in the region. Similarly, there are countries in the region like Myanmar and Bhutan, which have only recently recognized the human rights of its citizens, and deny the existence of LGBTI communities in their countries, often labeling them as 'problems'.

### Yet there has been some progress ...

Participants discussed the progress that has taken place in the last decade. In a number of countries across the region, participants reported that the **ACCEPTANCE** of the LGBTI community has increased significantly in the past decade. Countries like Nepal, Mongolia and Tonga reported that the existence of LGBTI movements contributed largely to successful awareness-raising and increased level of acceptance of LGBTI people. Some countries reported success in terms of **LEGAL REFORMS**. In Nepal, the Supreme Court decision of 2007 allowed the issuance of identification documents based on SOGI, and an order to the legislature that discriminatory laws be repealed. In India, the Delhi High Court decision struck down the discriminatory application of section 377 of the Penal Code. The decision is now on appeal to the Supreme Court of India, but the government is no longer defending the provision. Similarly in Mongolia the registration of an LGBTI organization was one of the first achievements after a long legal battle. In Australia, the issuance of identification documents based on gender identity was an example of successful legal reform of the past decade. In some countries like Bangladesh, Nepal and Tonga, participants reported **BUDGETARY ALLOCATIONS** to the LGBTI community. In Tonga and Nepal, LGBTI issues were included in the school curriculum. In Nepal, the **LGBTI MOVEMENT HAS GROWN** to 39 Community Based Organizations (CBOs) and 53 support groups. Similarly, there was representation of the community in the parliament. LGBTI is now recognized in the national census. Suicide cases have gone down drastically in Nepal in the last decade. The New Zealand Human Rights Commission has brought specific attention to transgender issues through a community survey and report, titled “To be who I am”. Similarly, in Mongolia a supportive National Human Rights Institution (NHRI) has helped fund research and also runs an educational television program on LGBTI issues.

*The struggle in Mongolia is common to that in this region. We need to support each other in unity and solidarity. - Otgonbaatar Tsedendemberel, Mongolia.*

*"This conference in Kathmandu proves that the common assertion that LGBT rights are incompatible with Asian values is false." - Riddhi Baba Pradhan, Nepal's Minister of Women, Children and Social Welfare*

### And there is hope...

**Using the Yogyakarta Principles to highlight LGBTI inclusion** was discussed as a solution to the sensitization problem. The 29 principles are already in use in some Asia Pacific countries. Ideas were also shared about giving awards to 29 non-LGBTI people who have contributed to promoting LGBTI issues, running a television and newspaper campaign about the Principles to spread the message of acceptance and respect for all people, including LGBTI people. Special emphasis was laid on using mass media for this purpose.

**Researching and highlighting indigenous cultures, history and traditions on LGBTI community existence** would create indigenous knowledge and defense of LGBTI community such that their cultural ownership and traditional acceptance can be increased. Much of the resistance and exclusion of the community currently stems from misreported cultural practices. Nonetheless, participants emphasized that in a region as vast as the Asia-Pacific, “Asian values” must encompass respect for diversity, pluralism and inclusion.

**Creating LGBTI liaison officers in state structures** would enhance LGBTI participation in decision-making and also protect them from harassment. These liaison officers could be members of the LGBTI community, which would increase the understanding of LGBTI issues, and help to frame better government policies geared towards addressing LGBTI issues.

**Creating a dedicated fund for LGBTI at the state level** for engaging communities through advocacy and outreach would help sensitize communities to the issues of LGBTI rights. Local organizations that understand the site-specific cultural nuances and challenges are best for this type of engagement. The state mandates and funding should reach the often-discounted rural areas where the LGBTI communities typically encounter much discrimination.

**Joining hands with related issues and increasing community involvement to strengthen acceptance** of LGBTI issues. Alliances with the women's movement, anti-domestic violence movement, HIV/AIDS prevention movement, and others, help to build mainstream support and demonstrate the engagement of the LGBTI community in a broad range of human rights issues.

**Positive role of National Human Rights Institutions (NHRIs)** in creating a supportive environment for LGBTI activists was highlighted as a best practice. NHRIs can play a positive role in carrying out independent assessments about human rights violations against LGBTI people, bringing attention to the realities of LGBTIs through existing mechanisms like the Universal

Periodic Review (UPR), encouraging states to respond to LGBTI concerns, and strengthening partnerships with LGBTI organisations.

**State level support structures to ensure access to health and education** would enable LGBTIs to participate more actively in national development. This could include training to health professionals on LGBTI issues, and development of inclusive curricula, in consultation with civil society. This responsibility largely lies with the state but if states are hostile then participants suggest stronger advocacy measures. NGOs could create pilot programs on good practices to demonstrate the positive outcomes to States.

**A UN mechanism on SOGI** would help bring attention to LGBTI issues, strengthen protection, engage with governments, including around implementation of commitments made during the UPR, work with human rights defenders, and enhance systematic attention to the issues by the UN.

## CONCLUSION

### For the creation of an inclusive society...

*It's not just about demanding rights, it's about fulfilling the vision of a truly inclusive society that is a manifestation of the political set up that we have chosen in the country we live in. - Arvind Narrain, India*

Recognition of LGBTI rights by the state and amendment of discriminatory laws were among the priorities identified by participants. Participants also want governments to include LGBTI communities in consultations as part of the process of amending laws. Governments should recognize third gender as an identity and ensure implementation of measures to legally recognize changed gender status on all documents. Activities to sensitize the public and state institutions, including law enforcement agencies, about LGBTI concerns are a priority. Participants suggested that the UN should play a more proactive role on LGBTI issues. Participants also suggested that governments violating the human rights of LGBTI people should be held accountable.

### Summary of Key Recommendations for Various Actors

#### States

- Repeal all discriminatory laws and raise awareness of public officials and law enforcers on LGBTI rights. Fulfill commitments by translating international resolutions on SOGI, and recommendations in the High Commissioner's report, into national and local laws.
- Institutionalize LGBTI issues in laws and government structures and ensure representation and participation of LGBTI people in policy making.
- Set up LGBTI liaison persons in government offices.

- Provide allocations in national budgets to address LGBTI issues especially to ensure access to health and education of the LGBTI community.
- Provide ID documents that reflect one's self-defined gender identity.

#### Regional human rights mechanisms

- Investigate the condition of LGBTI human rights. Produce independent reports on findings.
- Institute regional mechanism to address SOGI issues and create opportunities to strengthen LGBTI network within the region through regional programs.
- Lobby for state level SOGI-inclusive laws on health care and education.
- Regionally invest in research that helps mainstream LGBTI rights and challenge the idea that sexual orientation and gender identity is a western issue.
- Leverage LGBTI friendly states to engage with "silent" states and proactively counter hate campaigns against LGBTI people.

#### United Nations

- Appoint a mechanism such as a Special Procedure on SOGI.
- Strengthen cooperation and sharing of best practices on SOGI issues by UN agencies, including training at the field level.
- Improve ways to enhance states' reporting on LGBTI conditions, better ways to ensure implementation and follow-up and increased accountability.
- Include SOGI in 'post MDG 2015 and beyond' agenda.

#### Other Stakeholders

- CBOs and NGOs: - Work on sensitizing different community members including family members, media/journalists, parliamentarians and bureaucrats, law enforcement agency members on LGBTI issues and rights through various training programs, counseling facilities etc.
  - Work on establishing LGBTI networks and explore common grounds with other existing human rights networks to strengthen the LGBTI movement further.
  - Develop indigenous cultural information on how LGBTI people belong in local culture.
- NHRIs - Monitor states and hold them accountable
  - Receive, investigate and resolve violations
  - Raise awareness and provide Human Rights education especially to state agencies.
- Courts: Act as a bridge between international human rights law and national laws, helping states to translate and domesticate international law.
- Private Sector: Introduce LGBTI friendly job application forms, procedures and workplace facilities.
- Media (new and traditional media): Reduce LGBTI stereotypes. Use affirming language and positive portrayals of LGBTI people. Initiate awareness campaigns and promote the Yogyakarta Principles.
- Schools: Include accurate, affirming information about LGBTI people in the curriculum.