



I G L H R C

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Human Rights Abuses in Asia On The Basis of Sexual Orientation, Gender Identity and Gender Expression (2000 – 2009)

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Introduction

IGLHRC presented this paper during a historic workshop organized by the Asia Pacific Forum² from May 5-7, 2009 in Yogyakarta, Indonesia, to consider what actions might be taken by National Human Rights Institutions (NHRIs) in Asia to prevent violence and discrimination on the basis of sexual orientation and gender identity. One strategy proposed was to promote understanding and implementation of the Yogyakarta Principles by members of the Asia Pacific Forum and the Asia Pacific Forum as a whole.

Language Usage

Words for homosexual, transgender, lesbian, gay, bisexual vary across cultures. Meanings attached to these terms are not universal. Consequently, definitions for sexual orientation and gender identity used by international, regional or national experts may not always correspond with one another. But there is a growing acceptance of some of the terminology used in this briefing paper, particularly in international human rights work—by various non-governmental organizations, national and regional human rights institutions, and United Nations human rights treaty bodies.

- **Sexual Orientation** describes an individual's physical, romantic, emotional and/or spiritual attraction to another person, including lesbian, gay, bisexual and heterosexual orientations.

¹ The International Gay and Lesbian Human Rights Commission (IGLHRC) works to advance human rights for everyone, everywhere to end discrimination based on sexual orientation, gender identity or expression. We monitor and document abuses, respond to human rights emergencies, and support grassroots and national efforts to change discriminatory laws and policies. IGLHRC has regional offices in South Africa and Argentina. The Asia Projects Coordinator is based in the Philippines. Grace Poore is the Regional Coordinator for Asia and the Pacific Islands and is from Malaysia.

² The Asia Pacific Forum is a consortium of National Human Rights Institutions (NHRIs) that comply with the Paris Principles. The Paris Principles are guidelines that set minimum standards for NHRIs to carry out their roles, including: independence guaranteed by the legislature or constitution, autonomy from government, power and resources to investigate, and pluralistic membership. Current members of the APF are: Afghanistan, Australia, India, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, Palestine, Philippines, South Korea, Sri Lanka, Thailand, Timor Leste. Previous thematic focal points of the Asia Pacific Forum include child pornography, death penalty, disability, human rights defenders, internally displaced persons, terrorism and rule of law, torture, trafficking, and women's rights.

- **Gender Identity** refers to a person’s deeply felt sense of identification with a specific gender, in relation to the social construction of masculinity and femininity. A person may have a male or female gender identity, or something other than or in between male and female. A person’s gender identity may or may not correspond with the sex assigned at birth. Since gender identity is internal, one’s gender is not necessarily visible to others. Gender identity is different from sexual orientation.
- **Gender Expression** refers to the external manifestation of one’s gender identity, usually expressed through “masculine,” “feminine” or gender variant dress, appearance, mannerisms, speech patterns and behavior. Gender expression is not necessarily an indication of sexual orientation.
- **Gay** is a synonym for homosexual. It is sometimes used to describe only male whose primary emotional and physical attraction is to other males.
- **Lesbian** refers to a female whose primary emotional and physical attraction is to other females.
- **Bisexual** refers to a person who is attracted to both sexes.
- **Transgender** is an umbrella term for people whose gender identity, expression or behavior is different from that typically associated with their assigned sex at birth, including but not limited to transsexuals, cross-dressers, and gender non-conforming people. Transgender people may be heterosexual, lesbian, gay or bisexual. The term transgender as it is used in the United States has limited resonance in many other countries. It does not convey many diverse expressions of gender identity or intersecting expressions of sexual desire, intimacy and gender nonconformity—for example, Bisu and Waria in Indonesia, Hijra in India, Katoey in Thailand, Metis in Nepal, Zenanas in Pakistan. In many cultures, the terms, “third gender” or “other gender” are frequently preferred to transgender.
- **LGBT** is an abbreviation for lesbian, gay, bisexual and transgender.
- **Homophobia** refers to an irrational fear or hatred of homosexuality and people who are (or are perceived to be) homosexual. **Transphobia** refers to an irrational fear or hatred of transgender people. These phobias manifest themselves in harassment, prejudicial and negative treatment, violence and other forms of discrimination.

Conditions For LGBT People in Asia

When people are deprived of respect because of their sexual orientation, gender identity and expression, they are much more vulnerable to human rights violations with far less possibility for redress and remedy. For example, LGBT persons in Asia experience forced institutionalization in mental rehabilitation clinics, electro shock treatment as aversion therapy, sexual harassment in school and at work, threats of rape to make you straight, physical attacks in the name of culture and religion, school expulsions, eviction by landlords, police extortion and kidnapping, family violence, media stigmatization. Employment and job promotions are denied if lesbian women look too masculine. Male co-workers stalk and sexually harass lesbians who cannot report for fear of backlash and retaliation.

Transgender people are also marginalized in their jobs, denied access to employment outside of stereotypical trades and service jobs, and are targeted for blackmail, harassment, and sexual violence from the community or people in positions of authority like the police. Activists who defend the rights of LGBT individuals experience threats to their safety, in some cases, harassment, attacks, even torture and abuse, with police participating in or doing nothing to stop these violations.

Many gay and lesbian people face additional discrimination because of their class, ethnicity, age, race, economic status and disability status. In countries with sodomy laws that criminalize consensual same sex relations between adults, gay and lesbian people frequently remain closeted and lead double lives. When they experience violence or discrimination, they are less likely to report for fear of state penalties, family rejection or community recrimination. In this kind of environment, reporting human rights violations becomes too dangerous, and complaint mechanisms don't exist or don't apply. Even if a complaint is filed, investigation may be unlikely and violators are not held accountable—in fact they have impunity. Consequently, the victim's experience of the initial violation is compounded by the State's failure to respond or care.

Cornerstones of Human Rights Protection

National Human Rights Institutions have the potential to serve as gatekeepers for the advancement of human rights in their countries. In Asia as elsewhere, they are considered the “cornerstones of human rights protection systems.”³ The Asia Pacific Forum is likely the only regional organization that comes close to being a regional human rights monitoring body like the African Commission on Human and People's Rights, Inter-American Commission of Human Rights, and the Council of Europe. While it is true that the Asia Pacific Forum is not an intergovernmental body, the commonality with these other regional organizations is that members of Asia Pacific Forum have expressed a shared political will regarding human rights—which has tremendous positive implications. For example:

- The Asia Pacific Forum and its members can be important partners with civil society groups that are working to change how LGBT people are treated in Asia.
- The Asia Pacific Forum can proactively advocate that sexual orientation, gender identity and gender expression are human rights.
- The Asia Pacific Forum can ensure that its member governments meet the accountability benchmark, thus leading by example to facilitate the progress of human rights for all in the region.

Human Rights and LGBT People

The challenge for members of the Asia Pacific Forum who support human rights for all people, including LGBT individuals, is advocating in the face of opposition—where national laws, cultural values, and religious beliefs are in conflict with sexual rights and gender rights. Yet a precedent exists for resolving this dilemma. Women were denied rights. For a long time, discrimination on the basis of sex was dismissed and rejected as an illegitimate demand. Women's rights advocates and feminists for sexual rights fought for decades before violence against women in the family and by intimate partners were recognized by the UN system and member states. People from marginalized caste groups, ethnicities, nationalities, religions, and with physical disabilities were also considered unworthy of protection, undeserving of rights, and in some cases, non-existent under existing national laws. Through grassroots, regional and international human rights advocacy, intergovernmental support was mobilized in favor of protections and affirmative rights for these groups. In each of these instances, there were religious, social, cultural, and moral objections, including by States that had ratified various

³ As observed during a March 2008 Internet discussion hosted by HURITALK Human Rights Policy Network about the role of UN agencies and UN country teams in supporting National Human Rights Institutions.

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international human rights treaties.

Even today, committees that monitor conventions and treaties, such as CEDAW, ICCPR, ICESCR, and Special Rapporteurs with different mandates continue to receive and address complaints as new forms of violence, new waves of repression, and new rationales emerge for deprivation of rights. But they have not halted the calls or struggles for equality. The recurring violations are a function of historical oppressions—sexism, racism, ethnic chauvinism, religious domination, able-body elitism. The same case must be made for advancing sexual, sexuality, and gender rights. Despite probable resistance, protections on the basis of sexual orientation, gender identity and expression must be repeatedly advocated, institutionalized, continually monitored for compliance, and consistently implemented in new and improving ways. And for Asia, there is no better tool than the Yogyakarta Principles to serve as a base from which to advance the protections for the fundamental right to sexual orientation and gender identity.

Between 2000 and 2009, some positive changes for LGBT people came to pass in Asia: Nepal's Supreme Court outlawed violence against sexual minorities, South Korea allowed post-operative transgender people to change their documents to reflect changed gender identity, China and Thailand declassified homosexuality as a pathology, two openly gay candidates ran for parliamentary seats in Taiwan, and four cities in India held simultaneous first-time LGBT Pride marches. Yet, even in these countries as with the rest of Asia and Pacific Islands, most abuses committed because of sexual orientation and gender identity continue falling through the cracks of human rights protections that are in place for others.

Two patterns are evident in the examples provided in this paper.

- a. LGBT people who experience violence and discrimination lose several inter-related rights such as freedom of expression, personal security, and effective legal remedies. They face intersecting discriminations, often held in place by interlocking barriers from multiple institutions—such as legal, medical, law enforcement, judicial, education, religion, family, etc.
- b. Abuses against LGBT people frequently involve both state and non-state violators.

The following case information was gathered from reports by international and national news media in Asia, electronic and print publications and websites of LGBT groups in Asia, shadow reports to various UN treaty bodies, reports to the Human Rights Council for its Universal Periodic Review of States, as well as email communication, emergency alerts and action requests received by IGLHRC from LGBT groups in Asia.

Institutional & Non Institutional Violence

A.

These rights were violated in the following case examples

- *right to life*
- *right to personal security*
- *right to freedom from arbitrary arrest and detention*
- *right to a fair trial*
- *right to equality and non-discrimination*
- *right to participate in cultural life*
- *right to promote human rights*
- *right to privacy*
- *right to treatment with humanity while in detention*
- *right to freedom from torture and cruel, inhuman or degrading treatment or punishment*
- *right to effective remedies and redress*
- *right to accountability*

Institutional Violence: Acts of Commission

a. *Police Abuse – Indonesia, November 2007*

— In Jakarta, a transgender woman, Elly Susanna, whose legal name was Sayep, jumped into Ciliwung River and drowned after running away from public order officers. The officers are officially deputized civilians and not part of the regular police force. They have fewer restrictions, and are more likely to commit human rights abuses. Elly could not swim. Eyewitness reports indicate, public order officers threw stones at Elly while she was in the river.⁴ According to Arus Pelangi, a national LGBT organization, Elly was mobilizing the transgender community for a public event to mark Transgender Day of Remembrance.⁵

b. *Police Abuse – Indonesia, January 2007*

— Hartoyo, an NGO worker in the province of Aceh, and his partner were assaulted by 15 civilians and forced out of their home at 11:30 p.m. one night. The attackers detained them until four police officers arrived to take them to the police station. While in police custody, the officers beat them, sexually abused Hartoyo, and forced Bobby to perform oral sex on him. They were then sprayed with cold water. Bobby was forced to urinate on Hartoyo's head. Humiliated and physically and emotionally

⁴ Dalih Sembiring, 'Deviant's' Take On Porn Law, *Jakarta Globe*, 6 December 2008. <http://www.thejakartaglobe.com/life-times/article/2368.html>

⁵ http://tgegypt.com/?page_id=28 and http://tgdor.org/the_list.shtml Also: http://asia.geocities.com/arus_pelangi/clipping/071208jktpost_fatalraid.html

exhausted, the two men were made to sign statements for the village chief to not engage in “homosexual actions again.”⁶

c. *Social Cleansing – Jordan, 2008*

— Saad Manisir, the military governor of Asaam is reported to have declared that he will eradicate any trace of male homosexuals in his jurisdiction.⁷

d. *Arbitrary Detention – Jordan, October 2008*

— Four homosexual Jordanian men were imprisoned on the charge of prostitution and denied bail until they renounced their homosexuality.⁸

These rights were violated in the following case examples

- *right to equality and non-discrimination*
- *right to recognition before the law*
- *right to a fair trial*
- *right to effective remedies and redress*
- *right to accountability*
- *right to freedom of opinion and expression*
- *right to freedom of peaceful assembly and association*

B. Institutional Violence: Acts of Omission

a. *Deprivation of Legal Recourse*

— The following countries represented in the Asia Pacific Forum either provide no legal protection or inconsistent legal protection on the basis of sexual orientation:⁹

⁶ Amnesty International, “Indonesia (Aceh): Torture of Gay Men by the Banda Raya Police,” index no. ASA 21/004/2007.

<http://www.amnesty.org/en/library/info/ASA21/004/2007/en>; Asian Human Rights Commission, “INDONESIA: Gay NGO Worker and Partner Allegedly Tortured, Sexually Abused in Aceh,” 17 March 2007. <http://www.ahrchk.net/ahrc-in-news/mainfile.php/2007ahrcinnews/1065/>

⁷ Originally published by *al-Ghad Daily* in Jordan, 27 October 2008; subsequently released by various English-language online sources; see, for example, *Menassat*’s report: <http://www.menassat.com/?q=en/news-articles/5059-military-governor-says-there-can-be-no-homosexuality-jordan>

⁸ *Ibid.*

⁹ As a recently published Human Rights Watch report indicates, the actual number of states with anti-sodomy laws on the books is difficult to tabulate. The International Lesbian and Gay Association’s 2008 compilation of legal prescriptions against “sodomy” also lists Afghanistan; upon further examination, however, it is clear that its legal position, if there is one, has been unclear since the ousting of the Taliban. See Human Rights Watch, *This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism*, 17 December 2008; Daniel Ottosson, *State Sponsored Homophobia: A World Survey of Laws Prohibiting Same Sex Activity Between Consenting Adults*, International Lesbian and Gay Association, May 2008.

Afghanistan, India, Indonesia, Jordan, Malaysia, Mongolia, Philippines, South Korea, Sri Lanka, Thailand, Timor Leste.¹⁰

b. *Deprivation of Appropriate Legal Redress – Indonesia, 2008*

— Hartoyo (see previous section) filed charges against the police officers who abused him. With assistance from Legal Aid Foundation and Arus Pelangi, a national LGBT organization, he went to court. The Police Chief in Aceh suspended the police perpetrators with pay for the egregious assault. Over a year later, the court determined the actions to be a “minor offence”¹¹ and the judge gave the four police officers probationary sentences. No action was taken against the 15 members of the community who dragged Hartoyo and his partner from the privacy of their home and assaulted them.

c. *Deprivation of Appropriate Legal Redress – Thailand, 2006 & 2009*

— Despite a strong LGBT push for inclusion in the national anti-discrimination law, the 2006 constitution of Thailand does not protect the rights of homosexual/same-sex practicing persons. One direct consequence of this omission in the law is that there was no police protection for the second Gay Pride Parade in Chiang Mai, scheduled for February 21 2009, and cancelled due to violence.¹²

These rights were violated in the following case example

- *right to personal security*
- *right to participate in cultural life*
- *right to seek redress and remedies*
- *right to freedom of opinion and expression*
- *right to privacy*

C. Non-institutional Violence: Community Policing

a. *Corrective Rape – Thailand, 2004*

— A young Burmese lesbian living and working in a factory in Mae Sod, Thailand, went shopping with a male friend. Returning home at night, they were joined by several other men who worked at the same factory. Blocking her way, one of the men told her that she was beautiful, and said that it was a waste for her to be a lesbian. He urged his friends to take her to the paddy field and change her sexuality to be ‘normal.’ He

¹⁰ *Summary Prepared by the Office of the High Commissioner for Human Rights, India, 6 March 2008, A/HRC/WG.6/1/IND/3: “More than half of all cases of sexual abuse and rape go unreported.” This may be referencing sexual abuse and rape of children 5-12 (part of a report by UNICEF and the NGO Prayas) but the UPR document does not make this clear. If this number reflects sexual abuse and rape in a heterosexual context, then it can be safely assumed that sexual abuse (including but not limited to discrimination) and rape toward LGBTI people is even more infrequently reported.*

¹¹ IGLHRC Email received from Indonesian activist, King Oey from Arus Pelangi, October 15, 2008.

¹² “Thailand: Violence Against Gay People,” March 16, 2009, <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/873.html>

grabbed her and told his friends to “cure this abnormal lesbian so she can enter womanhood.” All six men raped her. The next day, the whole factory knew about the rape, but no one came to her defence.¹³

D. Non-institutional Violence: Vigilantism

a. *Religious Vigilantism – Indonesia, 2000*

— 150 members of the Islamic groups, Gerakan Anti-Maksiat (Anti-Vice Movement) and Gerakan Pemuda Ka’bah (Ka’bah Youth Movement) attacked an art show held by gay communities in Kaliurang, Yogyakarta, which they mistook for a sex party.¹⁴

b. *Informants Behavior – Indonesia, 2007 & 2008*

— The Indonesian Pornography Law lists gay and lesbian sex as deviant. It allows for informal civilian intervention in behaviors that constitute “porno action,” including homosexuality—which opens the door for more community vigilantism.¹⁵

c. *Religious Vigilantism and Non-state Law – Malaysia, 2007 & 2008*

— Ayu, a transgender individual, was beaten and detained by the Melaka Islamic Religious Affairs Department (JAIM). She was hospitalized but later she was charged for having violated Syariah dress code (Section 72) and fined RM1,000 (US288).¹⁶

— The Malaysian National Fatwa Council passed a fatwa against “tomboys,” severely limiting the social acceptance of different expressions of gender.¹⁷ According to the national news agency, Bernama, Council chairman Abdul Shukor Husin is reported to have said, “The ruling was prompted by recent cases of young women behaving like men and indulging in homosexuality.”¹⁸

¹³ Amnesty International, “Human Rights and Sexual Orientation and Gender Identity,” March 2004.

¹⁴ Sembiring, “‘Deviant’s’ Take on Porn Law.”

¹⁵ “Fundamentalism in Indonesia,” IGLHRC, March 12, 2009, <http://iglhrc.wordpress.com/>

¹⁶ “Transsexual: I Was Treated Like A Hardcore Criminal,” *Malaysiakini*, August 10, 2007. <http://www.malaysiakini.com/news/70572>

¹⁷ “In Malaysia, fatwa condemns tomboys,” *Asia News.it*, 24 October 2008:

<http://www.asianews.it/index.php?l=en&art=13569&size=A> The fatwa states: “Women who have the appearance, mannerisms and sexual orientation similar to men is haram in Islam. We urge parents and the Muslim community to pay serious attention to this problem. Emphasis should be on teaching and guiding young girls, especially on the aspects of their clothing, behaviour and appearance, so that this problem may be avoided because it runs counter to their fitrah [the innate natural sexual inclination that each human is born with and which does not change. In Islam, if a person is born male, he is masculine and is sexually attracted to women; and if a person is born female, she is feminine and sexually attracted to men] and Allah's way.”

¹⁸ “Muslim Clerics in Malaysia Ban Tomboys, Forbid Homosexuality,” *Black Christian News*, <http://www.blackchristiannews.com/news/2008/10/muslim-clerics-in-malaysia-ban-tomboys.html>

Institutional & Non Institutional Discrimination

These rights were violated in the next set of examples

- *right to universal enjoyment of human rights*
- *rights to equality and non-discrimination*
- *right to security*
- *right to privacy*
- *right to freedom from arbitrary deprivation of liberty*
- *right to a fair trial*
- *right to work*
- *right to social protections*
- *right to freedom of opinion and expression*
- *right to freedom of thought, conscience and religion*
- *right to found a family*
- *right to participate in public life*
- *right to participate in cultural life*
- *right to promote human rights*
- *right to effective remedies and redress*
- *right to accountability*

A. Institutional Discrimination: Acts of Commission

a. *Sodomy Laws*

— The following countries represented in the Asia Pacific Forum criminalize consensual same-sex sexual conduct among adults: India (11 years to life imprisonment), Malaysia (11 years to life imprisonment), Nepal (1 month to 10 years imprisonment), Sri Lanka (1 month to 10 years imprisonment)¹⁹ These laws contribute to a hostile environment for LGBT people and justify gross violations of individual privacy, sexual autonomy, bodily integrity, and basic safety. They also justify arbitrary detention and torture by the State, and public and private discrimination.

b. *Police Extortion – India, 2004 - 2006*

— The sodomy law, Section 377 of the Indian Penal Code is used by police in some jurisdictions to blackmail homosexual men. In his essay “Section 377 and the Dignity of Indian Homosexuals,” Indian activist, Alok Gupta writes, “A local community group in Mumbai called GayBombay for the last couple years has been receiving numerous stories, experiences and complaints by gay men about their personal experiences with blackmailers. These stories typically involve entrapments by the police, when innocent gay men only hoping to meet another man for social contact, are duped into giving out

¹⁹ Ottosson, *State Sponsored Homophobia*, International Lesbian and Gay Association, May 2008,

a lot of money under threats of disclosure of their homosexuality.”²⁰ Section 377 is currently under review.²¹

c. *Repression of Human Rights Promotion – India, 2001 - 2008*

- While Section 377 of the Indian Penal Code prohibiting same-sex sex has rarely been enforced, it is used as an “institutional excuse” to harass and suppress LGBT and HIV/AIDS human rights defenders, which has public health implications.²² In 2001, police detained NGO workers from Naz Foundation International and Bharosa Trust for running a “gay sex racket.” The NGO workers were conducting sexual health education with men having sex with men (MSM).
- October 2008 reports from Sangama, an LGBT group in Bangalore, indicate, “Police brutally attacked five sexual minority activists and arrested them on false charges when they tried enquiring about the illegal detention of five hijras (working class male-to-female transgender persons). Police illegally detained and assaulted a large number of human rights defenders when they held a peaceful protest against the illegal police actions. Police also arrested 31 human rights defenders on false charges.”²³

d. *Discrimination by Law – Indonesia*

- While Indonesia does not have a sodomy law, vagrancy laws, morality laws, and public order laws are used to target transgender people in public spaces even if no laws are being broken. The new federal pornography law so broadly defines pornography that it can potentially include “harmless social photographs put on the internet, traceable to the owner, and informational pamphlets on HIV/AIDS prevention.”²⁴

e. *Political and Legal Harassment – Malaysia, 2008*

- Malaysian politician Anwar Ibrahim was accused a second time of engaging in same-sex sex, when he announced his intention to run for public office. This was potentially a matter of defamation by his political opponents who used the sodomy law to frame him.²⁵

f. *Police Intimidation – Mongolia, 2004*

- The Mongolian Lesbian Information Center was harassed by the General Police Department for “disseminating pornography.” The Center subsequently disbanded in 2004 when it was threatened with legal prosecution. Reportedly, police would call the

²⁰ Alok Gupta, “Section 377 and the Dignity of Indian Homosexuals,” *Economic and Political Weekly*, 18 November 2006, 4815-4823: 4821.

²¹ “India: New Delhi Court Hears Case Against Sodomy Law,” September 25, 2008, <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/205.html>

²² Human Rights Watch report, *Epidemic of Abuse: Police Harassment of HIV/AIDS Outreach Workers in India*, Vol. 14, no. 5, July 2002: pp. 19-27.

²³ <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/587.html> Also see <http://sangamablog.blogspot.com/>

²⁴ Sembring, “‘Deviants’ Take On Porn Law;” Abdul Khalik, “Porn Bill Passed Despite Protests,” *The Jakarta Post*, 31 December 2008: <http://www.thejakartapost.com/news/2008/10/31/porn-bill-passed-despite-protests.html> Also see analysis of potential impact of the law on LGBT people <http://iglhrc.wordpress.com/>

²⁵ Grace Poore, “Malaysia: In This Country, An Accusation of Sodomy Is Defamation of Character,” 3 July 2008: <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/238.html>

Center's hotline number and threaten to crack down on the perfectly legal project, set up to distribute educational material on sexual orientation.²⁶

g. *Workplace Discrimination – Mongolia, 2006*

- A lesbian was forced to quit her job when her sexuality was revealed to her employer. She suffered verbal abuse at her job and had to resign after a year and a half of harassment. She now feels that she cannot be herself at her new job.²⁷

h. *Military Harassment and Workplace Discrimination – Nepal, 2007 & 2008*

- The Maoist army discharged a lesbian couple from the military, citing their sexuality as the reason. One report from the couple states, “Our possessions were seized, we were left in a nearby jungle with our hands tied behind our backs.”²⁸ Although the Maoist Party, which is part of the coalition government in Nepal, later issued a formal apology, the couple has still been refused readmission.
- Bakti Shah, a lesbian, was a corporal and trainer in the Nepal army with outstanding performance, surpassing her male peers in all categories. She was put into 60 days solitary confinement and subsequently discharged from the army. Her partner, who joined later, was sentenced to 45 days house arrest and subsequently discharged as well. Grounds for dismissal and punishment were lesbianism. Bakti was also told that she was penalized for a corporal socializing with a cadet in living quarters, which was a code violation. Although Bakti’s roommates were always present when the girlfriend visited, and the two were never caught in sexual activity, the army imposed a double penalty—confinement and discharge. Bakti appealed the decision and requested reinstatement. After postponing the hearing multiple times, the army decided in July 2008 that the 60 days confinement was unnecessary. However, to date there has been no reinstatement although Bakti has already served the time. The army now says the two women were not punished for lesbianism but for breaking the army code of conduct although it is widely known that male officers frequent the rooms of junior female cadets and have not been penalized.²⁹

i. *Denial Of Legal Status – Nepal, 2008*

- Despite efforts by Nepali activists, the government has yet to pass legislation making it possible for transgender (known as third-sex) Nepalese citizens to carry national identity cards that reflect their gender identity.³⁰

²⁶ Anaraa Nyamdorj and Robyn Garner, *The Status of Lesbian and Bisexual Women and Transgendered Persons in Mongolia: Shadow Report for the 42nd CEDAW Committee Session*, p. 11.

²⁷ Nyamdorj and Garner, *Status of Lesbian and Bisexual Women and Transgender Persons in Mongolia*, p.12.

²⁸ Post B. Basnet, “PLA-evicted Lesbians Seek Justice,” <http://www.kantipuronline.com/kolnews.php?nid=180038>

²⁹ IGLHRC interview by Grace Poore, Kathmandu, Nepal, October 13, 2007.

³⁰ Sunil Pant, “Nepal: Government Disrespects Third Gender Citizens,” 25 June 2008, <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/234.html>

These rights were violated in the following case examples

- *rights to equality and non-discrimination*
- *right to personal security*
- *right to privacy*
- *right to freedom of opinion and expression*
- *right to peaceful assembly and association*
- *right to freedom of thought, conscience and religion*
- *right to participate in cultural life*
- *right to promote human rights*
- *right to protection from medical abuses*

B. Non-institutional Discrimination: Stigma and Intimidation

a. *Community Policing – Indonesia, 2008*

— A lesbian community activist in Jakarta was involuntarily outed (sexual orientation revealed) after a television appearance supporting LGBT rights. Her comments on TV angered some viewers who contacted the TV station. The station avoided reprisals from the religious community by divulging her name and contact information. Shortly thereafter she began receiving threats. “I was forced to move and had to change all of my contact information,” she said. While she continues to stand up for LGBT rights, she is more discreet to avoid danger.³¹

b. *Media Stigmatization – Jordan, 2008*

— A Jordanian newspaper accused male homosexuals of “spreading vice and moral decay.”³²

c. *Medical Mistreatment – Philippines, 2008*

— Staff at a hospital in Cebu made fun of a gay man while he was having rectal surgery. A nurse videotaped the surgery and posted it on YouTube. The patient's identity and medical condition were made public, causing him and his family emotional and mental anguish from the negative publicity.³³

d. *Religious Backlash – Sri Lanka, 2009*

— A conservative religious group threatened members of Equal Ground, an LGBT rights group in Colombo, and published articles condemning their activities.³⁴

³¹ “Courage Comes In A Small Package,” February 22, 2009, <http://rightsofpassage-nctc.blogspot.com/>

³² <http://www.menassat.com/?q=en/news-articles/5059-military-governor-says-there-can-be-no-homosexuality-jordan>

³³ “Will Hospital Be Held Accountable For Violating Gay Man?” IGLHRC, May 26, 2008, <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/217.html>

³⁴ Email received by IGLHRC from Equal Ground, February 21, 2009.

IGLHRC Recommendations

1. Members of the Asia Pacific Forum must recognize that sexual orientation, gender identity and expression are integral to every person's dignity and humanity. The freedom to claim these aspects of selfhood without fear of violence and/or discrimination enables a climate of respect and equality for all people. National Human Rights Institutions (NHRIs) in Asia should lead by example when it comes to advocating respect, protection and fulfilment of human rights for people because of their sexual orientation, gender identity and expression. Get and promote training on these issues. Debunk myths about LGBT people. Confront homophobia wherever it occurs. Recommend and advocate for the appointment of LGBT people to NHRIs.
2. The Asia Pacific Forum must find a way to navigate cultural relativist arguments that deny the presence of homosexuality or alternative transgender expressions—these arguments in fact neglect and erase histories of homoeroticism and third gender presence in many Asian cultures.
3. All NHRIs in Asia and elsewhere must recognize the legitimacy of claims made by people who suffer violence and discrimination on the basis of their sexual orientation, gender identity and expression.
4. NHRIs should repeatedly, consistently and consciously raise the awareness of governments and citizens about the negative impact of state-sponsored homophobia and media stigmatization by encouraging research and awareness-raising campaigns. For example, Vietnam is currently undertaking a study to look at the impact of media stigmatization on people's attitudes towards homosexuality. The Netherlands government commissioned a study in response to rising homophobia there. The goal was to gauge how accepting Dutch society is of homosexuality. The findings were surprising especially for the Netherlands; they showed higher than expected levels of intolerance.³⁵
5. NHRIs are expected to be independent, autonomous and vigilant in their investigation of human rights abuses. Partnering or networking with LGBT and other civil society groups will improve NHRIs' documentation of the ways in which people's rights are violated because of their sexual orientation, gender identity and expression. NHRIs that co-sponsor and participate in national LGBT events can help build bridges with civil society groups and increase the credibility of NHRIs as national human rights defenders.
6. Many entities in the UN system have recognized and addressed the need for protections against violence and discrimination on the basis of sexual orientation and gender identity. NHRIs can benefit from the expertise and support of these UN bodies, which may include regional UN

³⁵ Saskia Keuzenkamp, David Bos, Jan Willem Duyvendak, Gert Hekma (eds.), "Acceptance of Homosexuality in the Netherlands," Abstract, *SCP-Report*, December 13, 2006. Questions in the Dutch study included: What is the present attitude of the Dutch population towards homosexuality, homosexual men and lesbian women, and homosexual behavior? What trends are evident in the acceptance of homosexuality in the Netherlands? Which population groups in particular have negative attitudes to homosexuality? What are the implications of the study findings for policy on homosexual emancipation, and how can developments in attitudes to homosexuality best be measured in the future? The findings published in 2006 were surprising especially for the Netherlands; they showed higher than expected levels of intolerance.

agencies and UN country teams. In turn, NHRIs can acquaint national governments and citizens with the international standards regarding sexual orientation and gender identity, and help promote these standards at local/national levels.

7. Women's rights advocates fought and won the struggle to get violence against women recognized in the public and private spheres, by state and non-state violators. Violence on the basis of sexual orientation, gender identity and expression also takes place in both spheres. In addition, it is said that in Asia, it is family and religion that primarily police sexuality. The Asia Pacific Forum is uniquely positioned to expose this violence.

Questions for National Human Rights Institutions in Asia

As a lesbian activist from Asia, it is quite exciting for me to anticipate the development of a policy on sexual orientation and gender identity (SOGI) by the Asia Pacific Forum. However, this organization does not function in the same way as other regional human rights organizations, which prompts the following questions about the implications of a SOGI policy at the domestic/national level.

1. Member states of other regional organizations, such as the Council of Europe, the European Union and the Organization of American States have human rights instruments to guide them and comply with.³⁶ These organizations share the understanding that sexual orientation and gender identity are fundamental rights—an understanding that permeates human rights discourse at intergovernmental levels in Latin America and Europe. Since the Asia Pacific Forum does not function in the same way, how will its policy receive support when some of its members do not recognize LGBT people as having human rights? And without a mechanism for enforcement, what hope is there for a positive regional policy on sexual orientation and gender identity?
2. How will the APF policy reconcile the existence of sodomy laws in several Asian countries, including some member institutions? Even in countries with no sodomy laws, other state laws (against vagrancy, pornography, prostitution, and morality laws in general) as well as non state law such as religious law are used to target, harass and penalize LGBT people for not conforming to heteronormative sexual behavior and/or choice of partners.
3. Conservatism in Asia has usually been formulated in terms of cultural and religious relativism. How will this trend slow or stall the promotion and implementation of the Yogyakarta Principles?

³⁶ International Commission of Jurists, *Sexual Orientation And Gender Identity In Human Rights Law: Jurisprudential, Legislative and Doctrinal References from the Council of Europe and the European Union*, October 2007, p. 143. In 2000, the Parliamentary Assembly of the Council of Europe called on member states, which to date number 47, to include sexual orientation among the prohibited grounds for discrimination in their national legislation. The European Union called on its 27 member states to adopt anti-discrimination provisions based on sexual orientation in the field of employment. AG/RES. 2435 (XXXVIII-O/08); Organization of American States Resolution: Human Rights, Sexual Orientation, and Gender Identity (4th Plenary Session 3 June 2008). <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/460.html> The Organization of American States in keeping with its Charter passed a resolution in June 2008 that reaffirmed the principles of universality, indivisibility and interdependence of human rights. It condemned acts of violence and related human rights violations perpetrated against individuals because of their sexual orientation and gender identity.