



Helpdesk Research Report

Lesbian, gay, bisexual, transgender and intersex rights in national human rights institutions

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Question

Please identify a selection of national human rights institutions, including human rights commissions and ombudspersons, that have addressed LGBTI rights, and the strategies they have used.

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1. Overview

National human rights institutions (NHRIs) are state bodies with a mandate to protect and promote human rights. Although they are largely state funded, they operate independently from governments. Their role is to address discrimination and protect civil, political, economic, social and cultural rights. There are currently six types of NHRI: human rights commissions; human rights ombudsman institutions; hybrid institutions; consultative and advisory bodies; institutes and centres; and multiple institutions¹. There are more than 100 NHRI globally, of which 69 are accredited as fully compliant with the Paris Principles (known as 'A status' NHRIs)². The Paris Principles outline the status and functioning of NHRIs: monitoring; advising; public education; quasi-judicial role. NHRIs are accredited by the International Coordinating Committee for

¹ <http://nhri.ohchr.org/EN/AboutUs/Pages/RolesTypesNHRIs.aspx>

² <http://nhri.ohchr.org/EN/AboutUs/Pages/HistoryNHRIs.aspx>

National Human Rights Institutions (ICC), which also facilitates NHRI engagement with the UN Human Rights Council, and supports NHRIs within the UN system³.

NHRI have specific mandates set by the UN and the national government. The actions and strategies they are allowed to undertake commonly include:

- Investigating human rights complaints lodged by the public or organisations.
- Reviewing laws and policies, advising the government to repeal or establish laws.
- Holding national inquiries on human rights issues.
- Litigation and/or legal support for petitioners in human rights cases.
- Public education and advocacy.

This rapid literature review presents an assessment of which African and Asian NHRIs have engaged with lesbian, gay, bisexual, transgender and intersex rights (LGBTI), and the strategies they have used. Much of the information comes from internal reports, such as annual reports, and is not necessarily critical or unbiased. There are few academic articles which look specifically at the operation of particular NHRIs. The evidence base is therefore weak in academic terms, but there is a reasonable level of policy information available on NHRI websites. The report lists a selection of NHRIs which have concrete policies and positions on this issue, and is not a comprehensive review of all NHRIs. The geographic focus is due to the policy needs of the enquirer.

This report uses overview documents on LGBTI rights to identify countries in Asia and Africa which have specific policies, followed by a search through the relevant NHRI website. The countries listed below are loosely ordered within each region according to their level of work on LGBTI rights. Countries not mentioned are those which are not highlighted in the wider literature on LGBTI rights.

This report finds that:

- Overwhelmingly, NHRI policies on LGBTI have been developed recently. Many policies draw on the **Yogyakarta principles** from 2006⁴, with strategies developing in depth since around 2010.
- NHRIs almost unanimously take a **universal human rights stance** which is validated and supported by the UN. This institutional support allows NHRIs to criticise governments for failing to support certain human rights.
- NHRIs therefore often emphasise that **LGBTI rights are contained within existing UN rights principles**, particularly the rights to privacy, health, life, freedom from violence, non-discrimination and equality. This is used much more commonly than any strategy suggesting people of diverse sexual orientation and gender identity (SOGI) should be treated as a separate group.
- Most NHRIs engage with government through **annual or thematic reports** which are presented to parliament or ministers. Often, LGBTI rights are included as a section of a general report.

³ <http://nhri.ohchr.org/EN/AboutUs/Pages/History.aspx>

⁴ <http://www.yogyakartaprinciples.org/>. The principles outline the application of international human rights law to issues of sexual orientation and gender identity.

- Some NHRIs have successfully created **coalitions with civil society organisations** to advocate and lobby the government. Some have held consultations directly with members of the LGBTI community. This appears to have been useful in creating public pressure, but is only possible in countries where LGBTI people are comfortable talking about their situation.
- Many NHRIs engage with LGBTI rights through **complaints lodged**. This is a reactive rather than proactive strategy, and relies on potential complainants being aware they have recourse to the NHRI, feeling capable of lodging a complaint, confident that something will be done, and assured that they will not experience repercussions. In several case studies below, reports note that people of diverse SOGI are too intimidated to access NHRIs.
- Other strategies used by NHRIs include **legal support** for LGBTI people bringing cases against the state; **reporting back to the UN** under the Universal Periodic Review (UPR) system⁵; conducting **context surveys and publishing reports**; **advocating** for LGBTI-sensitive facilities; and **capacity and sensitivity training** for public services personnel.
- NHRIs approach LGBTI rights largely through legal mechanisms, particularly in Africa. Arguably, the NHRIs which have also been able to access and leverage civil society have had more success in creating change. Some have also found that it is successful to approach LGBTI rights via HIV prevention and support, which is usually less controversial.
- Finally, nearly all reports note that the lived experience for people of diverse SOGI is overwhelmingly negative and oppressive. Despite positive policies and the weight of international human rights norms, people's day-to-day lives continue to be characterised by stigma, discrimination and fear.

2. Africa

In Africa, homosexuality is criminalised in 38 out of 53 countries (McAslan Fraser, 2011). These 38 countries therefore do not support LGBTI rights in their legislature and the ability of NHRIs to promote these rights may be limited. Kerrigan (2013) provides a comprehensive overview of LGBTI rights in Africa. The section on NHRI action (p.147) reveals that NHRIs in Ghana, Uganda, Kenya, Sierra Leone, and South Africa have taken moderate to strong stances in supporting LGBTI rights, while the NHRI in Zambia has not.

Kenya National Commission on Human Rights (KNHCR)

The KNHCR has adopted a strong stance on LGBTI rights since around 2010, but has met with resistance from the government, as homosexuality is considered a criminal offence. Non-governmental bodies in Kenya have been regional leaders. The KNHCR has pressed for government change by producing a ground-breaking report on sexual minority rights; engaging with media and citizens on those issues; supporting the legal case of an intersex person; and consistently engaging with the UN UPR system.

⁵ <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>. The UPR requires each Member State to report back to the UN every few years on their actions and progress on human rights.

Kenya National Commission on Human Rights. (2012a). *Realising Sexual and Reproductive Health Rights in Kenya: A myth or reality? A Report of the Public Inquiry into Violations of Sexual and Reproductive Health Rights in Kenya*. KNHCR.

http://www.knchr.org/Portals/0/Reports/Reproductive_health_report.pdf

Kenya National Commission on Human Rights. (2012b). *Annual Report 2011/2012*. KNHCR.

http://www.knchr.org/Portals/0/AnnualReports/Annual%20Report%202011_2012.pdf

Kenya National Commission on Human Rights. (2011). *Annual Report for the 2010/2011 Financial Year*. KNHCR. <http://www.knchr.org/Portals/0/AnnualReports/Annual%20Report%202010%20to%202011.pdf>

The 2012 report (KNHCR, 2012a) contains a substantial chapter on the sexual and reproductive health rights of sexual minorities. It outlines the situation of LGBTI persons in Kenya and details the different sectors in which they face discrimination, as part of a national inquiry into sexual and reproductive health rights. It was initiated in response to a complaint lodged about violations to reproductive health suffered by women (KNHCR, 2011). The methodology for the national inquiry included (KNHCR, 2011):

- Literature review on reproductive health generally and the Kenyan situation in particular.
- Development of indicators on reproductive health.
- Forum with stakeholders and government agencies in the reproductive health sector to disseminate information about the proposed inquiry, and to get their buy-in. Meetings with the Director of Medical Services and Director of Public Health.
- Pre-hearing visits to provincial and district hospitals and nursing homes.
- A media briefing to consolidate collaboration of the media in profiling and creating awareness of the inquiry as well as issues of sexual and reproductive health rights.
- Two public hearings with a diverse group of witnesses including sexual minorities.
- A blog where people could post comments and experiences.

The report strongly recommends that laws criminalising diverse SOGI should be repealed in order to realise LGBTI rights. Additionally, it makes some further recommendations around awareness-raising and sensitivity training for health professionals, protection from violence, addressing stigma, support for transgender people, and decriminalisation of sex work.

This is only the second such report from an African NHRI (first is South Africa) (Kerrigan, 2013). Kerrigan (2013) notes that the report was made possible by personal commitment, work to encourage others to overcome prejudices and a will to take risks.

KNCHR has faced a backlash for taking this progressive stance on LGBTI issues (Kerrigan, 2013). The 2011-2012 Annual Report (KNHCR, 2012b) notes that KNCHR held a follow up public debate and created a video summary of the report to raise awareness and engage with the media on the key issues.

The 2010/11 annual report notes that the KNCHR has carried out litigation and human rights advocacy work. In one example, the KNCHR stood as an *amicus curiae*⁶ for an intersex person claiming that the constitution does not recognise their unique status and that there are no legal provisions that would recognise intersex gender rights. KNCHR provided information on legal gaps and presented a case for

⁶ Friend of the Court; someone who offers information relevant to the case but who has not been solicited by either party.

reform, based on similar international cases. Later in the case, it also presented a human rights position arguing that the constitution provides against sex-based discrimination, which should include intersex people. The court refused to recognise the case as public interest, but did award damages to the petitioner.

KNCHR has reported back to the UN Human Rights Committee under the UPR 2010, and has consistently highlighted the government's refusal to accept UN recommendations with respect to LGBTI rights, particularly decriminalisation and a comprehensive anti-discrimination law⁷.

There is, however, no mention of LGBTI rights in KNCHR's strategic plan for 2013-2018.

South Africa Human Rights Commission (SAHRC)

The South African government is a regional leader in pressing for the codification of LGBTI rights protection. SAHRC has successfully lobbied the government to bring LGBTI rights to the attention of the wider UN human rights bodies; has produced research on LGBTI issues in South Africa; and successfully brought legal cases against hate speech.

In 2011, SAHRC, along with civil society groups, successfully lobbied the government to table a resolution at the UN for a global study on the challenges faced by LGBTI people⁸.

In 2012, the SAHRC wrote a report on equality⁹, which contains a large section devoted to the situation of LGBTI people in South Africa. This was presented to the national Ministry for Women, Children and People with Disability, and shows the SAHRC's commitment to awareness raising and government advocacy. The SAHRC website contains several other examples of publicising violations of LGBTI rights and calls for action. It follows up on complaints registered¹⁰, but there is little systematic information on complaints about LGBTI abuses.

One significant case is that of Jon Qwelane, a columnist for the South African Sunday Sun newspaper, who published an article in 2011 in favour of removing constitutional protection for LGBTI people. Many people complained about it in the media. SAHRC took Qwelane to court, and won, leading to a fine for Qwelane¹¹.

SAHRC also responded to a call from traditional leaders to remove LGBTI rights from the constitution (Kerrigan, 2013). SAHRC initiated a dialogue with traditional leadership and LGBTI activists in 2012.

Human Rights Commission of Sierra Leone (HRCSL)

HRCSL has only been able to produce a few reports pressing the government to comply with international human rights law. There have been no complaints lodged, and very little civil society action, so HRCSL has adopted a strategy of leveraging international norms and standards.

⁷ E.g.

<http://www.knchr.org/Portals/0/InternationalObligationsReports/Universal%20Periodic%20Review%202012.pdf>

⁸ <http://www.sahrc.org.za/home/index.php?ipkArticleID=65>

⁹ <http://www.sahrc.org.za/home/21/files/Equality%20Report%2020%20Oct%202012%20Final.pdf>

¹⁰ E.g. <http://www.sahrc.org.za/home/index.php?ipkArticleID=202>

¹¹ <http://www.bbc.co.uk/news/world-africa-13603492>

HRCSL. (2010). *The State of Human Rights in Sierra Leone 2010*. Human Rights Commission of Sierra Leone. <http://www.hrctl.org/sites/default/files/2010%20Human%20Rights%20Report-Sierra%20Leone.pdf>

HRCSL. (2011). *The State of Human Rights in Sierra Leone 2011*. Human Rights Commission of Sierra Leone. <http://www.hrctl.org/sites/default/files/SOHR%20Report%202011%20p%2039-61.pdf>

The 2010 and 2011 HRCSL reports on the state of human rights in Sierra Leone both mention LGBTI rights. The 2010 report highlights that in Sierra Leone it is too dangerous for LGBTI people to be open about their sexuality, or to file complaints about abuses. Many individuals hide their sexuality in order to protect themselves. In 2011, the report notes the government's refusal to change legislation in line with international norms on non-discrimination and equality, and to decriminalise homosexual acts. The government of Sierra Leone signed the UN statement of 2011 which urged states to protect against and end acts of violence based on SOGI. The HRCSL report notes that this is in contradiction with the government's refusal to bring in equality legislation, and calls for clarity on its stance.

Uganda Human Rights Commission (UHRC)

The UHRC's action on LGBTI rights is largely framed around the Anti-Homosexuality Act. It has stated strong opposition and has outlined how the Act contravenes international law in its annual reports. It is worth noting here that the argument is mainly around male-to-male acts, with little mention of lesbians or any other SOGI. There is little engagement with civil society.

The UHRC recently released a statement in response to the 2014 Anti-Pornography Act and the Anti-Homosexuality Act¹², condemning the new laws, the resulting acts of violence and the societal interpretation of the law (for example the Anti-Pornography Act is sometimes understood to ban women from wearing miniskirts). The statement calls upon all stakeholders including government, civil society, the media and the public to reconsider the laws, and to refrain from (inciting) public violence.

Uganda Human Rights Commission. (2009). *12th Annual Report 2009*. Uganda Human Rights Commission. http://www.uhrc.ug/?wpfb_dl=42

The 2009 annual report contains a chapter examining the Anti-Homosexuality Bill at the time it was proposed. It condemns the bill, and provides a series of objections. It identifies that many of the bill's proposals violate international human rights standards.

Uganda Human Rights Commission. (2010). *13th Annual Report 2010*. Uganda Human Rights Commission. http://www.uhrc.ug/?wpfb_dl=41

The 2010 report briefly reiterates the UHRC's condemnation of the bill and calls on readers to oppose the bill. It also recommends decriminalisation of homosexuality and better protection for women who experience discrimination based on their SOGI.

The UHCR has not had much engagement with LGBTI and human rights advocates (Kerrigan, 2013).

¹² <http://www.uhrc.ug/?p=2266>

Ghana Commission on Human Rights and Administrative Justice (CHRAJ)

The CHRAJ makes no specific mention of LGBTI rights in the 2011-2015 strategic plan, nor in the annual reports. Kerrigan (2013) reports that CHRAJ has affirmed the universality of human rights without expressing support for LGBTI 'lifestyles', and has moved from a moderate position to a more progressive one in recent years. In 2010, the CHRAJ Commissioner argued for the right to privacy and non-discrimination, and in 2011 she criticised hate speech and argued for tolerance (Kerrigan, 2013).

3. Asia

Asia Pacific Forum. (2010). *ACJ Report: Human Rights, Sexual Orientation and Gender Identity*. APF 15, 15th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Bali, Indonesia, 3 - 5 August 2010. http://www.asiapacificforum.net/support/issues/acj/references/sexual-orientation/downloads/Human_Rights_Sexual_Orientation_and_Gender_Identity_Final_Report.doc.pdf

The Asia Pacific Forum commissioned a review in 2009 of the region's consistencies and/or inconsistencies with international human rights law. This document describes various countries' compliance. Many countries in the region have recently decriminalised same-sex sexual conduct, although 20 countries still criminalise it. There are also a range of other laws which have been used to target people of diverse SOGI, such as vagrancy, public nuisance, national security, public morality, obscenity, indecency and public order. It provides lists of the relevant laws in each state, and makes recommendations for NHRIs.

UNDP & IDLO. (2013). *Regional Report: The Capacity of National Human Rights Institutions to Address Human Rights in Relation to Sexual Orientation, Gender Identity and HIV*. Bangkok, UNDP. http://asia-pacific.undp.org/content/rbap/en/home/library/hiv_aids/regional-report--the-capacity-of-national-human-rights-instituti/

This report gives a regional aggregated overview of the capacity of eight NHRIs: Bangladesh, India, Nepal, Pakistan, Sri Lanka, Indonesia, the Philippines and Timor-Leste. The individual country findings are summarised below for: Nepal, Indonesia and the Philippines. Summaries are not provided for countries which do not have a clear policy focus on LGBTI/SOGI: Bangladesh, India, Pakistan, Sri Lanka, and Timor-Leste.

The report finds that, overall, NHRIs have had a significant role in improving and advocating for LGBTI rights. Strong and open leadership from NHRIs is identified as a key factor in mobilising political will and capacity, as is a LGBTI focal person within the NHRI. Engaging with civil society has also been a significant factor in NHRI capacity to support and advocate for LGBTI rights.

Nepal National Human Rights Commission (NNHRC)

The Government of Nepal has a progressive agenda on LGBTI rights, including pressing for same-sex marriage; passports and citizenship certificates for the third gender (transgender) rather than being forced to identify as male/female; and inclusion of LGBTI issues in national action plans.

NNHRC has strong connections with LGBTI civil society actors; it has actively advocated for LGBTI rights; it monitors and contributes to government human rights plans and sits on high-level committees.

Chapagain, J. S. & Bajagain, B. (2013). *Report to the Regional National Human Rights Institutions Project on inclusion, the right to health and sexual orientation and gender identity*. Bangkok, UNDP and IDLO. National Human Rights Commission of Nepal.

http://www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2013-nhri-project-on-right-to-health-sogi-nepal.pdf

The NNHRC includes LGBTI rights in its overall strategic plan; has investigated and monitored violations; and conducted capacity building, awareness raising and advocacy for LGBTI rights. It has appointed a focal person since 2005 to manage these activities.

The NNHRC has strong connections with civil society organisations and the LGBTI community, including writing this report in collaboration with the Blue Diamond Society, a Nepali LGBTI NGO formed in 2001. A key part of the NNHRC's success is its strong relationship with civil society, particularly Blue Diamond Society. In 2012, they held a joint meeting to discuss national strategies. Among other things, this resulted in the creation of an internship at the NNHRC office for an LGBTI community representative.

Nepal's NHRC has received seven complaints on LGBTI issues since 2000. Many of the complaints are against administrative and government authorities, concerning discrimination or abuse. The complaints appear to have been handled successfully, with the NNHRC supporting the re-registration of the Blue Diamond Society; alerting police authorities to allegations of abuse by police officers; and monitoring and mediating between parties. It has amended the complaints form to allow complainants to specify 'other gender'.

The NNHRC also monitors government plans, policies and regulations for possible human rights issues, including LGBTI rights. It is currently working closely with the government to formulate the next National Human Rights Action Plan. Detention monitoring is also a high priority for NHRC, where it documents violations and complaints. It recommends that additional (non-male/female) cells are made available for people of diverse SOGI. The UPR submission was prepared by the NNHRC, and a mid-term review prepared in August 2012. All 135 recommendations were accepted by the government, so monitoring implementation is currently a priority for NNHRC.

Nepal's NHRC actively advocates for LGBTI rights. It mainstreams these rights into capacity building and training programmes as well as providing LGBTI-specific trainings. In the November 2013 elections, it wrote to the Electoral Commission to express concern that there was a safe and secure environment for LGBTI voters. NHRC sits on the national Same-Sex Marriage Committee along with six other members; this Committee looks into the social and legal issues of same-sex marriage to inform the legal provisions for this.

The Philippines Commission on Human Rights (PCHR)

The PCHR has good connections and collaborates well with civil society organisations; it has participated in rights marches; it has received and given LGBTI-sensitivity training; supported legal cases; and helped develop national policies, largely working through HIV channels.

Bagas, J. (2013). Report to the Regional National Human Rights Institutions Project on inclusion, the right to health and sexual orientation and gender identity. Bangkok, UNDP and IDLO. Commission on Human Rights of Philippines. http://asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2013-nhri-project-on-right-to-health-sogi-philippines.pdf

The PCHR has had a dedicated programme of work on SOGI since 2010. In 2010, it established partnerships with LGBTI groups; examined and assessed existing national laws and policies; advocated on the rights of LGBTI people; and developed a human rights education module for local government and community groups¹³. PCHR has received training from civil society partners to enhance its staff's understanding of LGBTI/SOGI issues. In 2011, it wrote to the Department of Foreign Affairs of the Philippines to urge the Foreign Affairs Secretary to support the UN resolution on SOGI. The PCHR supports the enactment of a domestic anti-discrimination bill. Its annual reports show that it has also participated in social movement action, marching in Pride marches¹⁴ and observing the International Day Against Homophobia, Biphobia and Transphobia¹⁵.

A large part of the PCHR's work on LGBTI rights is conducted through the lens of HIV/AIDS prevention and support. The national governmental HIV working group is active in developing HIV and SOGI national policies, standards, state accountability and redress mechanisms, and the PCHR has also invested in capacity building.

A key case study given in the national report is that of Ang Ladlad, a political party standing for LGBTI persons and equality. It was denied accreditation as a political party in 2007 and 2009, as it was accused of 'advocating for sexual immorality'. PCHR responded with an advisory statement stressing that homosexuality is not criminalised in the Philippines, and criticising the use of religious doctrine within the political system¹⁶. Ang Ladlad took their case to the Supreme Court, and PCHR filed a motion to intervene on their behalf as an *amicus curiae*. The accreditation decision was overturned, setting a precedent for other cases on LGBTI political rights, and allowing Ang Ladlad to stand. The PCHR's approach was largely framed around LGBTI rights as human rights and human dignity, rather than separate minority rights.

The report attributes success to LGBTI rights champions within the organisation, and productive collaborations with civil society, enabling the PCHR to be responsive to the community's needs.

Indonesia National Human Rights Commission (KOMNAS HAM)

KOMNAS HAM uses good links with the LGBTI community to inform and educate its work; and has received a high number of complaints, indicating awareness and trust in the organisation. It has provided training to government officials and the LGBTI community.

¹³ http://www.asiapacificforum.net/support/issues/sexual_orientation/indigenous-peoples/nhri-activities

¹⁴ http://www.chr.gov.ph/MAIN%20PAGES/about%20us/PDF/2011_chr_annual_report.pdf

¹⁵ http://www.chr.gov.ph/MAIN%20PAGES/about%20us/PDF/2012_chr_annual_report.pdf

¹⁶ The statement can be found here: http://www.chr.gov.ph/MAIN%20PAGES/news/PR_14Nov09_Ladlad.htm

KOMNAS HAM. (2013). *Report to the Regional National Human Rights Institutions Project on inclusion, the right to health and sexual orientation and gender identity*. Bangkok, UNDP and IDLO. National Human Rights Commission of Indonesia. http://asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2013-nhri-project-on-right-to-health-sogi-indonesia.pdf

KOMNAS HAM has signed Memoranda of Understanding on human rights with several national, regional and international bodies, notably with the Asia Pacific Forum on the Yogyakarta Principles. It does not have dedicated staff or specific policies on SOGI and LGBTI.

From 2004 to 2007 KOMNAS HAM had a sub-commission on protection of special groups which included LGBTI. This was eliminated due to structural changes. KOMNAS HAM actively undertakes staff training on SOGI/LGBTI issues; has conducted training on human rights directly to the LGBTI community, to enable them to claim their rights; and has trained government officials on LGBTI issues.

From 2010 to 2012 KOMNAS HAM received a total of 24 complaints related to SOGI, which is high compared to the rest of the countries in this region. 14 complaints were related to the right to justice, specifically related to police abuse during examination in the police station. KOMNAS HAM has handled LGBTI complaints successfully, including representation in court and providing legal expertise.

KOMNAS HAM has good links with civil society organisations and the LGBTI community, demonstrating the community's trust in the organisation.

National Human Rights Commission of Mongolia (NHRCM)

NHRCM has commissioned research on the situation of LGBTI persons; supported NGOs; documented violations; and has carried out promotional and educational activities.

National Human Rights Commission of Mongolia (2013). *12th Report on Human Rights and Freedoms in Mongolia*. Ulaanbaatar, NHRCM.

http://www.asiapacificforum.net/support/issues/sexual_orientation/downloads/nhri-activities/mongolia-2013-annual-report

In 2010, the NHRCM undertook an analysis of the national legal framework for discriminatory elements, as well as helped raise awareness among the estimated 80,000 LGBTI people in the country of their rights, the Yogyakarta Principles and existing mechanisms to address human rights violations.

In the 2013 annual report, considerable space is devoted to assessing the LGBTI rights situation, which is the first such official discussion in Mongolia. It begins by asserting the rights of all to access equal and fair treatment. In 2012, the NHRCM undertook a survey on the 'Implementation of the rights of sexual minorities', with support from UNDP, and a survey on the causes and factors of discrimination against LGBTI persons. The results of this survey are presented in the annual report.

It has also helped formally register the NGO 'LGBTI Centre'; has documented violations of LGBTI rights; and has carried out promotional and educational activities with police and officers of law enforcement agencies on the rights of LGBTI persons. The end of the report recommends to parliament that the UNHCR recommendations on LGBTI are adopted, and that awareness-raising is conducted to improve societal attitudes to LGBTI people.

Following this report, the state adopted the recommendations laid out, including:

'(11) to take effective measures to implement the recommendations related to the rights of gay, lesbian, bisexual, and transgender people (LGBTI) provided by the United Nations Human Rights Council, the Committee against Torture, and the Human Rights Committee.'¹⁷

Human Rights Commission of Malaysia (SUHAKAM)

SUHAKAM has primarily chosen to report on LGBTI rights situation without taking definitive action. For example, it has engaged with religious groups to document opinions on LGBTI rights.

SUHAKAM. (2013). 2012 Annual Report. Human Rights Commission of Malaysia.

<http://www.suhakam.org.my/wp-content/uploads/2013/11/SUHAKAM-BI-2012.pdf>

SUHAKAM. (2012). 2011 Annual Report. Human Rights Commission of Malaysia.

<http://www.suhakam.org.my/wp-content/uploads/2013/11/AR2011-BI.pdf>

SUHAKAM. (2009). 2009 Annual Report. Human Rights Commission of Malaysia.

<http://www.suhakam.org.my/wp-content/uploads/2013/11/annual-report2009.pdf>

SUHAKAM has taken a relatively strong stance on LGBTI rights. Its annual reports have consistently assessed LGBTI rights since at least 2009. It has asserted that LGBTI rights must be considered under human rights norms¹⁸, and it has endorsed the Yogyakarta Principles to the extent they are consistent with religious and cultural values. Its approach is primarily to report on the situation, and to emphasise that LGBTI rights are part of the UNHDR, without officially endorsing what they call the LGBTI 'lifestyle'.

SUHAKAM has faced strong opposition from Islamic groups, and there have been anti-LGBTI protests in Malaysia. In the 2012 annual report, a case is described where Islamic law is upheld over secular law to the detriment of LGBTI people bringing the case. The report highlights concern with this outcome, but does not appear to have taken action. The dual legal system is problematic, but SUHAKAM must work within its confines. The 2011 report shows that SUHAKAM held meetings with representatives of Muslim, Hindu and Christian religious groups in 2010 and 2011 to discuss their views on LGBTI issues. It hopes to meet with Buddhists and Taoists as well.

The 2011 annual report was met with some resistance by Islamic government representatives, to which SUHAKAM responded that as a UN member state, Malaysia must comply with the UNHDR, and emphasised that the issue can be considered in terms of discrimination rather than promotion of LGBTI issues¹⁹. In 2011, however, SUHAKAM also recommended to parliament that new laws be enacted to protect LGBTI people and provide them with a means of redress²⁰.

SUHAKAM also attended the 2011 2nd Asia Pacific Outgames Human Rights Conference, which focused on diversity in sexual orientation and gender.

¹⁷ <http://www.mn-nhrc.org/eng/main3/22/85-the-state-great-khural-releases-a-resolution-to-implement-the-12th-report-on-human-rights-and-freedoms-in-mongolia.html>

¹⁸ http://www.asiapacificforum.net/support/issues/sexual_orientation/nhri-activities/downloads/nhri-activities/Malaysia%20-%20Study%20on%20LGBTI%20rights.pdf

¹⁹ <http://www.suhakam.org.my/wp-content/uploads/2014/01/Sexual-minority-rights-are-not-human-rights.pdf>

²⁰ <http://www.suhakam.org.my/wp-content/uploads/2014/01/Respect-rights-of-sexual-minorities-govt-reminded.pdf>

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McAslan Fraser, E. (2011). *Helpdesk Research Report: Lesbian, Gay, Bisexual and Transgender (LGBTI) and Aid*. Birmingham, UK: GSDRC, University of Birmingham.
<http://www.gsdrc.org/docs/open/HDQ769.pdf>

Kerrigan, F. (2013). *Getting To Rights: The Human Rights of Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Africa*. Danish Institute for Human Rights. <http://um.dk/en/~media/UM/English-site/Documents/Danida/Partners/Research-Org/Research-studies/LGBTI.pdf>

Key websites

- Asia Pacific Forum: http://www.asiapacificforum.net/support/issues/sexual_orientation
- UN OHCHR – list of NHRIs: <http://nhri.ohchr.org/EN/Contact/NHRIs/Pages/Global.aspx>

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About this report

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