



SOGIESC FACT SHEET SERIES

Fact Sheet 8: What more NHRIs can do

Introduction

The Yogyakarta Principles and Yogyakarta Principles Plus 10 urge NHRIs to take action on human rights issues relating to sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC). This includes not only an external focus, for example through complaints handling and human rights education, but also attention to including lesbian, gay, bisexual, transgender and intersex (LGBTI) people as leaders and staff.

Often the first place to begin integrating a focus on SOGIESC human rights is within an NHRI itself, through leadership from the NHRI's governing body and management. NHRIs' core functions can also be utilised to promote and protect the rights of LGBTI people.

1. NHRI's internal work

1. Sensitisation training

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

b. Strategic planning

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

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

Some questions that an NHRI might want to ask itself include:

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

c. *Employment and human resource practices*

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

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

Diversity and inclusion should be explicit in an NHRI’s governance documents and demonstrated in its employment practices. All Commissioners and staff should feel safe and able to participate fully and openly in the work environment.

Non-discrimination policies and procedures should specifically include SO, GIE and SC and other employment-related provisions should be inclusive of LGBTI people. It is important to regularly measure employee perceptions of safety, dignity, and inclusiveness at work.

d. *Recognise how universal human rights apply to LGBTI people*

The provisions of international human rights law extend in full to all people. This is the unanimous view of international human rights experts, expressed in court decisions, reports, general comments, concluding observations, and recommendations from multiple United Nations human rights mechanisms.

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

The Yogyakarta Principles and their supplement, the YP+10, are the most authoritative statement of what international human rights law obliges States to do, and not do, to promote and protect the rights of LGBT people.

2. NHRIs' external promotion and protection work

a. Advice

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

b. Education and awareness raising

All three dimensions of human rights education are very relevant for NHRIs' work on SOGISC issues. This cover:

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

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

c. Monitoring

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

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

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

A [study](#) conducted by the Human Rights Commission of **Malaysia** (SUHAKAM) in 2019 focused on the experience of transgender people in Kuala Lumpur and Selangor. The study found that transgender people experienced high levels of harassment, abuse and violence because of their gender identity and gender expression. This included physical violence, verbal violence, emotional violence and sexual violence by authorities, family members, intimate partners and members of the public. Bullying and hate speech were common experiences for transgender people in places of education.

The ["Prism" report issued in 2020 by the New Zealand Human Rights Commission](#) identified six key human rights issues related to people of diverse SOGIESC, based on widespread community consultation. These were the rights to freedom from discrimination, to information (data collection gaps), to recognition before the law, to the highest attainable standard of health, to education, and to work.

d. Complaint handling

All NHRIs in the Asia Pacific region have "quasi-judicial" or conciliation responsibilities to receive, investigate and resolve human rights complaints. Some NHRIs have developed resources explaining how their complaints process can be used to address the types of human rights violations experienced by LGBTI people. Others track the number of SO, GIE and SC complaints, including outcomes achieved.

Complaints forms will be more accessible to transgender and intersex people if they enable complainants to specify what name and gender marker they wish to have recorded.

e. Court interventions and monitoring

Many NHRIs have the power to intervene in court proceedings and present submissions on human rights law, as of right or as a friend of the court. Often courts are not familiar with SOGIESC terminology, the experiences of LGBTI people, and the relevant human rights standards.

As national experts on human rights law, NHRIs play a valuable role by sharing that expertise and experience in court proceedings. This might include making submissions in relevant court cases to ensure that domestic law operates in accordance with international human rights law, including its application to SOGIESC issues as set out in the Yogyakarta Principles.

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

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

f. Advocacy

NHRIs advocate for the acceptance and implementation of their advice, including the results of their investigations, monitoring reports and national inquiries. Advocacy is also educative and raises awareness about the NHRI, its work and human rights generally. It can be directed towards any sectors of society that affect the human rights of LGBTI people. Examples might include advocating for law reform; developing guidelines for health professionals, schools or employers; pushing for implementation of international human rights obligations; or including SOGIESC issues in national action plans.

g. National inquiries

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

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

h. Cooperation and engagement

The Paris Principles require that NHRIs work in cooperation with all sectors of society, including other state institutions and NGOs. NHRIs must also preserve their independence. NHRIs are neither part of the government nor NGOs but need to work closely with both. When an NHRI's

independence is trusted, it can help to promote dialogue between government, judiciary and civil society.

It is part of an NHRI's role to reach out to organisations working on human rights issues for intersex, transgender, lesbian, gay, and/or bisexual people. During APF's SOGIESC workshops in 2016 and 2017, NHRIs and NGOs in this region shared these ideas about ways that they can work together on SOGIESC issues.

NHRIs AND NGOs WORKING WELL TOGETHER

LEARN MORE ABOUT EACH OTHER

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

COLLABORATE

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

WORK TOGETHER

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

✓ Be courageous

Key Points

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

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

If your NHRI wishes to submit any studies, court cases, reports, photographs, videos or updates in relation to its SOGIESC work please forward them to: apf@asiapacificforum.net