**Asia Pacific Alliance for Sexual and Reproductive Health and Rights:** *submission to the Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.*

1. The Asia Pacific Alliance for Sexual and Reproductive Health and Rights (APA) welcomes the Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the opportunity for civil society to provide input to the upcoming thematic report: “Marginalisation and exclusion from socio-cultural environments”, to be presented at the 74th Session of the UN General Assembly on 17-30 September 2019.

APA’s mission is to mobilize regional civil society advocacy to hold governments and other stakeholders accountable for commitments and obligations towards the realization of sexual and reproductive health and rights (SRHR) of all persons in the Asia Pacific.

2. Lesbian, gay, bisexual, trans and gender diverse persons are contributors to the achievement of equitable and sustainable development, and to reaching ambitious commitments of Agenda 2030. With the overarching aim to “leave no one behind”, certain goals such as Goal 10 “reduce inequality within and among countries” and Goal 16 “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels,” support the inclusion and transformative approach necessary to realize human rights for lesbian, gay, bisexual, transgender, intersex and queer/questioning (LGBTIQ) peoples.

3. The 1994 International Conference on Population and Development ICPD) Programme of Action (PoA), which is reaffirmed by Agenda 2030, recognizes the central role that human rights play in the achievement of sustainable development. The first principle of the ICPD PoA emphasizes that all human beings are born free and equal, without distinction of any kind. Everyone is equally entitled to the enjoyment of all human rights regardless of their sexual orientation or gender identity/expression or sex characteristics.

4. LGBTIQ persons are also referred to in a range of international human rights treaties in relation to their civil, cultural, economic, political and social rights. These include principles of equality and non-discrimination, participation, and accountability.

5. A number of human rights treaty guidance and decisions issued by several treaty bodies reinforce the principle of non-discrimination, such as the United Nations Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee against Torture, and the Committee on the Elimination of Discrimination against Women. It is exemplified by the opening words of the Universal Declaration of Human Rights (UDHR): “All human beings are born free and equal in dignity and rights” and article 2, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind.”

6. In Asia Pacific at the regional level, governments have directly recognized the need to address the exclusion and marginalization of LGBTIQ people in the 2013 Asia Pacific Ministerial Declaration on Population and Development (APAMDPD). Government “express[ed] grave concern at acts of violence and discrimination committed against individuals on the grounds of their sexual orientation and gender identity[[1]](#footnote-1)” and committed to “Work to reduce vulnerability and eliminate discrimination based on sex, gender, age, race, caste, class, migrant status, disability, HIV status and sexual orientation and gender identity, or other status[[2]](#footnote-2).

And in the 2017 Asia Pacific Roadmap to Implementing the 2030 Agenda for Sustainable Development in Asia Pacific, governments recognized the rising inequality in the region by “placing the elimination of inequality at the center of the region’s development path”. They further acknowledge that “inequality of opportunity, disproportionately affect [s]… vulnerable groups”[[3]](#footnote-3) such as LGBTIQ.

6. Asia Pacific governments underscored the importance of protecting marginalized groups and people in vulnerable situations,[[4]](#footnote-4) through the 2018 Mid Term Review (MTR) process of the 2013 APMDPD, and reiterated the need to eliminate all forms of discrimination in the provision of SRHR services in the region, particularly for young people, persons with disabilities, migrants and people of diverse sexual orientation and gender identity[[5]](#footnote-5).

7. Violence against LGBTIQ people because of real or perceived differences is pervasive and widespread in Asia Pacific and “violence against LGBT persons tends to be especially vicious compared to other bias-motivated crimes”[[6]](#footnote-6) due to deeply ingrained structural inequalities and a myraid of factors. The currently rising intolerance and violence observed in Indonesia is an example of the complexity of political, social, economic, legal and cultural factors that affects this[[7]](#footnote-7).

8. Added to this, many factors reduce the likelihood that violence against LGBTIQ persons is reported to authorities, including the high levels of stigma attached to being trans or gender diverse; the criminalization of gender identity or expression through laws prohibiting cross-dressing; the absence of anti-discrimination protections; and inaction or violence from state actors, including police.

9. Discriminatory criminal law is often used to harass and punish LGBTIQ people, such as laws criminalizing consensual same-sex relationships, which violate rights to privacy and to freedom from discrimination. In the Asia Pacific region, nine countries still have law which criminalizes same sex behavior. Most recently, Brunei implemented a Sharia Penal Code in which the death penalty would in theory be applicable for offences such as rape, adultery, same sex relations and extramarital sexual relations for Muslim citizens[[8]](#footnote-8).

Public nuisance and vagrancy laws have also been used to arbitrarily harass trans women in countries such as Thailand, Singapore, Indonesia, Cambodia, Nepal, Malaysia and the Philippines. And Malaysia and Indonesia have dedicated religious police that are charged with arresting trans people under these laws[[9]](#footnote-9).

10. Criminalization also leads to greater stigmatization and increases the marginalization experienced by affected groups, and can also contribute to additional violations of their human rights. In settings where same-sex consensual sexual behaviour is against the law, people may be deterred from seeking health services out of fear of being arrested and prosecuted.”[[10]](#footnote-10).

11. LGBTIQ people are also subjected to stigma and discrimination from employment opportunities, including being rejected for positions, sexual harassment, dismissal or being forced to leave jobs, and denial of partner benefits available to heterosexual couples[[11]](#footnote-11).

12. Reduced job opportunities can also lead to further marginalization and have negative health impacts. Transgender people, for instance, are over represented in sex work, and the vast majority of countries in the region still criminalize sex work. Criminalization of sex work has been proven to hinder use of condoms by transgender people, as these can become incriminating evidence of sex work[[12]](#footnote-12).

A recent report found that even in China, where “transgender people do not necessarily face outright legal penalties … the absence of nondiscrimination laws and lack of enforcement of overarching policies on non-discriminatory access to healthcare and HIV related services, means they are left without effective protection”. Furthermore criminalization of sex work in China leaves them susceptible to violence and abuse by police, and engagement in high risk activities leaves them at higher risk of HIV and STIs[[13]](#footnote-13).

**Recent Developments and Good Practices**

13. A number of notable positive legal changes that strengthen social, political and economic inclusion of LGBTIQ people have been made recently in the region of Asia and the Pacific. In 2018, a landmark Supreme Court decision in India struck down section 377 on the penal code, which criminalized consensual same-sex conduct, as unconstitutional[[14]](#footnote-14). And in May 2019, in lawmakers in Taiwan approved a bill legalizing same-sex marriage, making Taiwan the first country in Asia to pass gay marriage legislation[[15]](#footnote-15).

14. Cross-dressing or female impersonation laws have been successfully challenged in Asia and the Pacific. In March 2013, Samoa repealed Section 58N of the Crimes Ordinance Act. In November 2014, the Court of Appeal of Malaysia declared that Section 66 of the Shariah Criminal Enactment of Negeri Sembilan State was unconstitutional. This provision had made it unlawful for Muslim trans women to wear women’s clothes or present themselves as women, punishable by fines and up to six months of imprisonment. In February 2015, the Federal Court gave the state government permission to appeal this ruling. The appeal is limited to arguments about whether Section 66 contravenes the Federal Constitution. The Federal Court will not accept from the state government that the Appellate Court has no jurisdiction over Shariah law 3.3.8.3 Public Offences.

15. There are a number of good practices from civil society in the region which aim to strengthen social, political and economic inclusion of LGBTIQ people. Some examples include:

* “Blueprint For The Provision Of Comprehensive Care For Trans People”[[16]](#footnote-16) by the Asia Pacific Transgender Network (APTN) is a comprehensive, accessible trans health reference document for trans community advocates, health professionals, policymakers, and those who design or deliver services to trans people in order to improve health and human rights for trans people and trans communities. It includes clinical advice about meeting the health needs of trans children, youth and adults, good policies and good practices of health professionals.
* [Finance Inc Compass Series](https://apcom.org/wp-content/uploads/2019/03/Compass-Series-Finance-Inc-rev-27032019_.pdf)[[17]](#footnote-17) is being implemented by Asia Pacific Coalition on Male Sexual Health (APCOM), and the Asian Development Bank and the private sector are being engaged towards LGBTQI inclusion. The overarching long-term goal of Finance Inc. is to contribute to improved access of persons of diverse SOGIESC to economic and social services specifically health, education and financial resources and services. It also aims to contribute to increased participation of LGBTQI communities in the conversations aimed towards inclusion in the context of development.
* The ‘Pride in Humanitarian System’ consultation was organized by APCOM, APTN, ASC, Edge Effect, IPPF and UN Women in June 2018. The consultation brought together 120 participants representing diverse SOGIESC communities, civil society organization working on SOGIESC issues, and other stakeholders in the humanitarian system. The resulting call to action[[18]](#footnote-18) included the call for meaningful engagement and inclusion of people of diverse SOGIESC in all aspects of humanitarian action and disaster risk reduction actions across the Asia-Pacific.

1. 2013 Asia Pacific Ministerial Declaration on Population and Development, para 8. [↑](#footnote-ref-1)
2. 2013 Asia Pacific Ministerial Declaration on Population and Development, para 84 [↑](#footnote-ref-2)
3. 2017 Asia Pacific Roadmap to Implementing the 2030 Agenda for Sustainable Development in Asia Pacific, p.13. see: <https://www.unescap.org/sites/default/files/publications/SDGs-Regional-Roadmap.pdf> [↑](#footnote-ref-3)
4. Report of the Midterm Review of the Asia Pacific Ministerial Declaration, Annex 1 Chair’s Summary, para 3. [↑](#footnote-ref-4)
5. Report of the Midterm Review of the Asia Pacific Ministerial Declaration, Annex 1 Chair’s Summary, para 9. [↑](#footnote-ref-5)
6. Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (2011) report of the High Commissioner on Human Rights A/HRC/19/41 [↑](#footnote-ref-6)
7. # For more information see: Human Rights Watch. 20 February 2018. Indonesia’s anti-LGBT drive should concern all Asia. <https://www.hrw.org/news/2018/02/20/indonesias-anti-lgbt-drive-should-concern-all-asia>

   [↑](#footnote-ref-7)
8. Brunei’s new penal code would enshrine ‘cruel and inhuman punishments’ UN rights chief warns . April 2019. See**:** <https://news.un.org/en/story/2019/04/1035831> [↑](#footnote-ref-8)
9. Human Rights Watch. 2014 [↑](#footnote-ref-9)
10. WHO. 2015. Sexual Health, Human Rights and the Law, p. 23 [↑](#footnote-ref-10)
11. UNDP. 2015. Leave no one behind Advancing social, economic, cultural and political inclusion of LGBTI people in Asia and the Pacific. See: <https://www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2015-leave-no-one-behind.pdf> [↑](#footnote-ref-11)
12. Poteat*et al*. 2015. HIV risk and preventive interventions in transgender women sex workers. See: <https://www.ncbi.nlm.nih.gov/pubmed/25059941>  [↑](#footnote-ref-12)
13. Asia Catalyst. 2015. “MY LIFE IS TOO DARK TO SEE THE LIGHT” A Survey of the Living Conditions of Transgender Female Sex Workers in Beijing and Shanghai. See: <https://asiacatalyst.org/wp-content/uploads/2014/09/Asia-Catalyst-TG-SW-Report.pdf> [↑](#footnote-ref-13)
14. <https://www.bbc.com/news/world-asia-india-45429664> [↑](#footnote-ref-14)
15. See: <https://www.cnn.com/2019/05/17/asia/taiwan-same-sex-marriage-intl/index.html> [↑](#footnote-ref-15)
16. Asia Pacific Transgender Network (2017) Blueprint For The Provision Of Comprehensive Care For Trans People. See <http://www.weareaptn.org/2017/06/01/blueprint-for-the-provision-of-comprehensive-care-for-trans-people/> [↑](#footnote-ref-16)
17. see: <https://apcom.org/wp-content/uploads/2019/03/Compass-Series-Finance-Inc-rev-27032019_.pdf> [↑](#footnote-ref-17)
18. see: <https://apcom.org/2018/07/16/no-longer-left-behind-sogiesc-asia-and-the-pacific-call-for-action-in-the-humanitarian-system/> [↑](#footnote-ref-18)