

Written submission in response to the Call for Input by the Special Rapporteur on extrajudicial, summary or arbitrary executions on the Killings of LGBTIQ+ Persons

By Asia Pacific Transgender Network¹

7 June 2024, Bangkok, Thailand

Trans and gender diverse people experience hate crimes and murders, but access to justice and remedies remains out-of-reach

1. In April 2024, Esther Ravato, a 19-year-old gender diverse person from Fiji, was allegedly tortured and murdered by a group of people after being taken from outside her home.^{2,3} The Fiji police concluded that Esther died from complications connected to an existing medical condition and dismissed the case,⁴ despite criticisms and calls to investigate from non-profit organisations and the local LGBTQIA+ community.

2. Globally, 1,373 trans and gender diverse persons were murdered between 2020 and 2024, with at least 141 individuals killed across Asia and the Pacific. India (43), Pakistan (43) and the Philippines (30) showcased the highest rates of murder, with many perpetrated by a person that the victim knew, such as colleagues, friends and partners; and incidents occurring across a variety of locations, such as public spaces, private homes and businesses.⁵

3. Trans and gender diverse persons face a variety of challenges in obtaining legal protection, remedies and access to justice after experiencing hate crimes. Criminalisation, discriminatory attitudes, harassment and ill-treatment by enforcement officers (including inappropriate misgendering of victims when recording hate crimes), a lack of protective legislation, the absence of complaint mechanisms, stigma and a lack of awareness of trans and gender diverse realities across judicial operators result in impunity for perpetrators and difficulty for victims and survivors of human rights violations to access effective support, protection and remedies.⁶

¹ Asia Pacific Transgender Network (APTN) is a regional network that advocates for the human rights of transgender and gender diverse people. APTN is based in Thailand and has worked with 26 countries across the Asia Pacific region.

² Narayan, V. (2024, April 15). *NGO Coalition calls for urgent investigations after alleged murder of 19 yr old sex worker from the LGBTIQ+ community*. fjiivillage. <https://www.fjiivillage.com/news/NGO-Coalition-calls-for-urgent-investigations-after-alleged-murder-of-19-yr-old-sex-worker-from-the-LGBTIQ-community-84fr5x/>.

³ Radio New Zealand. (2024, April 16). *Call for justice after suspected murder of Fiji's LGBTIQ+ community member*. <https://www.rnz.co.nz/international/pacific-news/514403/call-for-justice-after-suspected-murder-of-fiji-s-lgb-tqi-community-member>.

⁴ Australia Broadcasting Corporation. (2024, April 18). *Fiji's LGBTIQ community devastated by death of young trans woman*. <https://www.abc.net.au/pacific/programs/pacificbeat/fijihate/103738396>.

⁵ Trans Murder Monitoring. (n.d.). <https://transrespect.org/en/research/tmm/>.

⁶ Independent Expert on sexual orientation and gender identity. (2017). *A/HRC/35/36: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*.

4. Investigations into transphobic hate crimes are often characterised by a lack of transparency, with many cases experiencing delays or being prematurely dropped with little evidence.⁷ In certain cases, law enforcement officers themselves can be the perpetrators of hate crimes and are complicit in their cover-up.⁸ There are also several cases of police harassment reported by community members engaging in sex work.⁹ Overall, these cumulative factors result in severe distrust in the police and enforcement officers, contributing to low rates of reporting hate crimes faced by trans and gender diverse people.

5. Hate crime cases faced by trans and gender diverse people are also poorly documented through the traditional judicial processes. To facilitate documentation of hate incidents, the Asia Pacific Transgender Network (APTN) developed guidelines for hate crime monitoring and self-report tools for transgender and gender diverse advocates and communities in the region.¹⁰ This initiative aims to increase evidence in advocating for better protection and services for trans and gender diverse people from across Asia Pacific.

The absence of legal protections and criminalisation increases the vulnerability of trans and gender diverse people to transphobic hate incidents

6. Access to justice, protection and remedies for transphobic hate crimes remain difficult in the absence of trans-affirming laws and policies. The majority of States in Asia and the Pacific lack non-discrimination legal frameworks that explicitly include sexual orientation, gender identity, sex characteristics and gender expression among prohibited grounds of discrimination. Only 3 countries (Samoa, Mongolia and East Timor) in Asia and the Pacific contain legislation that covers or increases penalties for crimes motivated by “sexual orientation”, which could extend to trans and gender diverse persons. Only two countries (Samoa and Mongolia) extend legal protections towards hate crimes based on gender identity.¹¹

7. Some States accord legal protection to trans and gender diverse people through broader, overarching mechanisms. Certain States prohibit discrimination on the basis of sex and/or gender in their constitutions, and there is precedence that these constitutional

<https://www.ohchr.org/en/documents/thematic-reports/ahrc3536-report-independent-expert-protection-aga-inst-violence-and>.

⁷ Redfern, C. (2021, January 7). *‘I’m scared every damn day’: In the Philippines, violence shadows trans lives*. Fuller Project.

<https://fullerproject.org/story/im-scared-every-damn-day-in-the-philippines-violence-shadows-trans-lives/>.

⁸ Riedel, S. (2024, May 22). *Argentina Charged 10 Police Officers in the Death of Trans Woman Sofia Fernández*. them. <https://www.them.us/story/sofia-fernandez-death-police-officers-charged-argentina>.

⁹ Pathak, S. (2022). *‘We are demanding full decriminalization’: Sex workers in India rally for labor rights*. The World.

<https://theworld.org/stories/2022/06/10/if-we-re-doing-willingly-how-can-it-be-wrong-asks-sex-worker-her-profession>.

¹⁰ Agarwal, U., Moitra, N., Shahbaz, S., & Thanh Chu, H. (2023). *Trans Thrive Project: Transcending Transphobia: A guide to the definition of transphobic incidents, violence and conversion therapy practices*. Asia Pacific Transgender Network.

<https://transthive.weareaptn.org/wp-content/uploads/2024/03/Guideline-to-Hate-Crime.pdf>.

¹¹ ILGA World database. (n.d.). *Legal Frameworks: Hate crime law*.

<https://database.ilga.org/hate-crime-law-lgbti>.

protections are extended to trans and gender diverse people.¹² However, these protections are subjected to interpretation by the judiciary of the State and are not guaranteed in absolute. Some States prohibit discrimination on the basis of sexual orientation or gender identity in other overarching laws; for example, Fiji, Kiribati and Samoa included sexual orientation as a prohibited ground of discrimination in laws regulating employment rights.¹³

8. Laws that explicitly criminalise persons based on their sexual orientation, gender identity or expression exist across many States. 28 countries in Asia and the Pacific explicitly criminalise homosexuality. Among them, eight countries in Asia criminalise and punish homosexual acts with the possibility of death sentence; Iran, Saudi Arabia and Yemen mandate and implement the death penalty, while the execution is a legal possibility in Afghanistan, Brunei, Pakistan, Qatar and the United Arab Emirates (UAE).¹⁴ No countries in the Pacific impose the death penalty for homosexuality, but six countries explicitly criminalise them, primarily through colonial-era anti-sodomy laws.¹³

9. Nine countries across Asia and the Pacific explicitly criminalise the gender expression of transgender people, where many are punished with the possibility of death sentence, incarceration or torture (e.g., whipping).¹⁴ Many States also persecute trans and gender diverse persons based on laws about public decency, public morals, public health and security,¹⁵ or through acts purported as “indecent” or “provocative”,¹⁶ including the explicit criminalisation of “cross-dressing” or “imitation of the opposite sex”.¹⁷ This is the systemic discrimination as the risk of violence, persecution and criminalisation is higher among trans and gender diverse people who are intersectionally marginalised in other areas of life, such as sex workers, migrants, refugees and asylum seekers.

10. Laws criminalising sex work have also been used disproportionately against trans and gender diverse people, especially trans and gender diverse sex workers. Only Taiwan has fully legalised sex work in Asia and the Pacific while APTN and many civil society organisations and groups are calling for decriminalisation to affirm the right to body autonomy and integrity of

¹² UNDP & APTN. (2017). *Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia*. https://weareaptn.org/wp-content/uploads/2019/05/UPDATED-ACKNOWLEDGMENTS-2019_rbp-hhd-2017-legal-gender-recognition-1.pdf.

¹³ Rodrigues, C. (2019). *A fairer future: Law reform and advocacy opportunities for women’s and PIDSOGIESC+ rights in the Commonwealth Pacific*. The Equality & Justice Alliance, The Royal Commonwealth Society. https://www.pgaction.org/pdf/2019/Opportunities_for_women_and_LGBTI_rights_Pacific.pdf.

¹⁴ Human Dignity Trust. (n.d.). *Maps of Countries that Criminalise LGBT People*. <https://www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation/>.

¹⁵ Human Rights Watch. (2022, August 10). *“I Don’t Want to Change Myself” Anti-LGBT Conversion Practices, Discrimination, and Violence in Malaysia*. <https://www.hrw.org/report/2022/08/10/i-dont-want-change-myself/anti-lgbt-conversion-practices-discrimination-and>.

¹⁶ UN High Commissioner for Refugees. (2015). *Protecting persons with diverse sexual orientations and gender identities: a global report on UNHCR’s efforts to protect lesbian, gay, bisexual, transgender and intersex asylum seekers and refugees*. <https://www.refworld.org/reference/themreport/unhcr/2015/en/108207>.

¹⁷ Justice for Sisters. (n.d.). *Criminalisation: Legal Gender Recognition for Transgender, INtersex and Non-Binary Individuals in Malaysia*. <https://justiceforsisters.org/en/topics-and-issues/criminalisation/>.

individuals.¹⁸ At the time of this writing, no country in Asia and the Pacific has decriminalised sex work.¹⁸ Criminalisation exacerbates police abuse faced by trans and gender diverse sex workers, drawing them into the criminal justice system and encountering sexual violence, such as harassment and assault.¹⁹

Barriers to legal gender recognition increase risks of persecution and the right to a dignified life

11. The right to life and access to justice for trans and gender diverse people are linked with their access to other areas of human rights. In 2018, the mandate holder of the Independent Expert on sexual orientation and gender identity stated that States have an obligation to provide access to legal gender recognition in a manner that is consistent with the rights to freedom from discrimination, equal protection of the law, privacy, identity and freedom of expression.¹⁹ This includes adopting legal measures of gender recognition based on self-determination; ensuring it is a simple administrative process; not connected with abusive requirements, such as medical certification, unwanted surgery and medical procedures, and forced divorces and sterilization; the acknowledgment and recognition of non-binary identities in their full diversity and specificity; and ensuring minors have access to legal gender recognition.¹⁹ Legal gender recognition based on self-determination helps trans and gender diverse people to exercise their human rights necessary to access justice.

12. In reality, legal processes to obtain gender recognition, if it exists, are often complicated, bureaucratic, dehumanising, costly, mandate abusive requirements, and are rooted in the pathologisation of trans and gender diverse identities. Due to such difficulties, many trans and gender diverse people in Asia and the Pacific are denied the right to legal gender recognition. Under the law, they are recognised by and misgendered as their assigned sex at birth. When the name and sex details in official documents of a trans and gender diverse person do not match their gender identity or expression, they become particularly vulnerable to transphobic hate crimes, discrimination and human rights violations, as well as extra-judicial killings.²⁰

13. For example, under countries that criminalise homosexuality, trans and gender diverse persons who engage in consensual activities with others of the same sex assigned at birth (such as trans lesbians where both partners are trans women, a heterosexual trans man with a cisgender woman) are at risk of persecution, punishment and death row. Trans and gender diverse people in such relationships would be considered engaging in same-sex activities under State anti-sodomy laws and persecuted as such.²¹

¹⁸ The Global Network of Sex Work Projects. (n.d.). *Global Mapping of Sex Work Laws*. <https://www.nswp.org/sex-work-laws-map>.

¹⁹ Independent Expert on sexual orientation and gender identity. (2021). *A/HRC/47/27: The law of inclusion - Report of the Independent Expert on sexual orientation and gender identity*. <https://www.ohchr.org/en/documents/thematic-reports/ahrc4727-law-inclusion-report-independent-expert-sexual-orientation-and>.

²⁰ Independent Expert on sexual orientation and gender identity. (n.d.). *The struggle of trans and gender-diverse persons*. <https://www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/struggle-trans-and-gender-diverse-persons>.

²¹ ILGA Asia. (2022, October 10). *Briefing Note: The Death Penalty and its Arbitrary Use to Punish LGBTIQ Persons*. <https://www.ilgaasia.org/publications/briefing-note-death-penalty-lgbtiq-2022>.

Exclusion of trans and gender diverse people in gender-based violence protections

14. Among the 141 trans and gender diverse people murdered between 2020 to 2024 across Asia and the Pacific, many incidents involved intimate partner violence (IPV) perpetrated by current or ex-partners. Trans women and trans-feminine persons are particularly vulnerable to a loss of life due to IPV. For example, a trans woman in the Philippines was stabbed to death by her partner after trying to end a relationship,²² while another trans woman from Bangladesh was beaten to death by her partner in an argument.²³

15. Despite the abundance of IPV cases, many State protection orders in domestic violence, intimate partner violence and rape laws across Asia and the Pacific do not apply to trans and gender diverse persons. This is due to a combination of factors, including the criminalisation of homosexuality and gender diversity; a lack of legal recognition of relationships involving LGBTQIA+ people in State constitutions;²⁴ and marriage and family laws narrowly defining marriage as between a (cisgender) man and a (cisgender) woman.²⁵ This subsequently increases the risk of death among trans and gender diverse victims and survivors.

Recommendations:

1. Adopt and implement non-discrimination and anti-hate crime laws and policies that explicitly include sexual orientation, gender identity, sex characteristics and gender expression among prohibited grounds of discrimination.
2. Repeal all laws criminalizing consensual same-sex relations and transgender and gender diverse identities and expressions, as well as prostitution and sex work.
3. Abolish the death penalty for all crimes, including for offenses relating to same-sex sexual acts and other vague provisions that criminalise persons of diverse gender expressions.
4. Reform judicial and non-judicial processes and practices - from documentation, reporting, to court systems - to ensure access to justice for survivors of transphobic crimes and violence.
5. Implement laws, policies, processes and good practices across institutions that are affirming to trans and gender diverse people, their rights and dignity, and meaningfully

²² Sararaña, P. (2023, January 1). *Cebu City stabbing attack: Man kills 'partner', wounds her 70-year-old mom*. Cebu Daily News. <https://cebudailynews.inquirer.net/482730/cebu-city-stabbing-attack-man-kills-partner-wounds-her-70-year-old-mom>.

²³ Stewart, C. (2023, August 15). *Bangladesh: Appeal for change after trans woman's murder*. Erasing 76Crimes. <https://76crimes.com/2023/08/15/bangladesh-appeal-for-change-after-trans-womans-murder/>.

²⁴ Women's Support Group, Sri Lanka. (2011, January). *The Status of Lesbians, Bisexual Women and Transgendered Persons in Sri Lanka: NGO Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women*.

https://outrightinternational.org/sites/default/files/2022-10/CEDAW_LBT_shadow_report.pdf.

²⁵ The Compendium of Cambodian Laws, Council for the Development of Cambodia, UNDP Project CMB96-005.(n.d.). *Law on the Marriage and Family*. https://unstats.un.org/wiki/download/attachments/106499235/Law%20on%20marriage%20and%20family_Cambodia.pdf?api=v2.

practice the right to non-discrimination according to international human rights standards.

6. Ensure access to legal gender recognition for trans and gender diverse people on the basis of self-identification and in accordance with international human rights standards.
7. Ensuring all State laws related to gender-based violence are inclusive of and protect the safety of trans and gender diverse people.
8. Engage in constructive dialogue, consultations and cooperation with States, trans and gender diverse human rights defenders (HRDs) and other stakeholders.