

# Revealing the Rainbow

The Human Rights Situation  
of Southeast Asia's LGBTIQ  
Communities and Their Defenders



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**JUSTICE**



UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER  
*Cambodia*

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### **About Destination Justice**

Established since 2011, Destination Justice is a social change organisation. We are changemakers who believe that justice is key to a peaceful society — particularly a society where people can resolve their issues by resorting to independent, fair and transparent justice; a society where laws are made by the people, for them, and freely accessible to them; and furthermore, a society where everybody is equal no matter who they are, what they think, or who they love.

To achieve this, we work according to the idea that from little things big things can grow: one mind changed; one piece of information put out there; one practice improved. We set ideas in motion, we provide tools, and we take action when necessary.

Through our Rainbow Justice Project, Destination Justice aims to foster dialogue in Southeast Asia on sexual orientation, gender identity and gender expression, and sexual characteristics (**SOGIESC**), and to provide advocacy tools to changemakers for the promotion and protection of the lesbian, gay, bisexual, transgender, intersex and queer (**LGBTIQ**) community's rights.

**Cover Photo Credit:** "Dancers under a large rainbow flag during the third gay pride in Vietnam", AFP in the South China Morning Post. 'Vietnam hosts third gay pride parade as attitudes soften', 3 August 2014, available at <http://www.scmp.com/news/asia/article/1565550/vietnam-hosts-third-gay-pride-parade-attitudes-soften> (last visited 27 November 2017).

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# Abbreviations and Defined Terms

<b>ACSC/APF</b>	ASEAN Civil Society Conference/ASEAN People's Forum
<b>AHRD</b>	ASEAN Human Rights Declaration
<b>AICHR</b>	ASEAN Intergovernmental Commission on Human Rights
<b>AIDS</b>	Acquired Immune Deficiency Syndrome
<b>ASC</b>	ASEAN SOGIE Caucus
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>ATP</b>	Association of Transgender People in the Philippines
<b>BERSIH</b>	Coalition for Clean and Fair Elections (Malaysia)
<b>Brunei</b>	Negara Brunei Darussalam or Nation of Brunei
<b>CamASEAN</b>	CamASEAN Youth's Future (Cambodia)
<b>Cambodia</b>	Kingdom of Cambodia
<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CEDAWC</b>	United Nations Committee on the Elimination of Discrimination against Women
<b>CODIVA</b>	Coalition for Diversity and Action (Timor-Leste)
<b>COMANGO</b>	Coalition of Malaysian NGOs in the UPR Process
<b>CCPR</b>	United Nations Human Rights Committee
<b>CPRD</b>	Convention on the Rights of Persons with Disabilities
<b>CRC</b>	Convention on the Rights of the Child
<b>CSO</b>	Civil society organisation

<b>DHRD</b>	Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms
<b>EU</b>	European Union
<b>FJI</b>	Islamic Jihadist Front (Indonesia)
<b>GBV</b>	Gender-based violence
<b>GONGOS</b>	Government-owned and controlled non-governmental organisations
<b>HIV</b>	Human Immunodeficiency Virus
<b>HRC</b>	United Nations Human Rights Council
<b>HRD</b>	Human rights defender
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICCPR OP2</b>	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICS Center</b>	Information, Connection and Sharing Center (Viet Nam)
<b>IDAHOT (IDAHO)</b>	International Day Against Homophobia, Transphobia and Biphobia (formerly known as the International Day Against Homophobia)
<b>ILGA</b>	International Lesbian and Gay Association
<b>ICNL</b>	International Center for Not-for-Profit Law
<b>Indonesia</b>	Republic of Indonesia
<b>INGO</b>	International non-governmental organisation
<b>IPON</b>	International Peace Observers Network (Philippines)
<b>ISF</b>	International Stabilization Force (Timor-Leste)
<b>JAG</b>	Joint Action Group for Gender Equality (Malaysia)
<b>JAKIM</b>	Islamic Development Department of Malaysia
<b>JAWI</b>	Malaysian Federal Territories Islamic Department
<b>LANGO</b>	Law on Associations and Non-Governmental Organisations (Cambodia)

<b>Laos</b>	Lao People's Democratic Republic
<b>LGBTIQ</b>	Lesbian, gay, bisexual, transgender, intersex, queer
<b>MSM</b>	Men who have sex with men
<b>Myanmar</b>	Republic of the Union of Myanmar
<b>NGO</b>	Non-governmental organisation
<b>NHRI</b>	National human rights institution
<b>NLD</b>	National League for Democracy (Myanmar)
<b>OHCHR</b>	United Nations Office of the High Commissioner for Human Rights
<b>OP-CEDAW</b>	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
<b>OP-ICCPR</b>	Optional Protocol to the International Covenant on Civil and Political Rights
<b>OP2-ICCPR</b>	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
<b>OP-ICESCR</b>	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
<b>Philippines</b>	Republic of the Philippines
<b>PFLAG</b>	Parents and Friends of Lesbians and Gays
<b>PVTM</b>	Malay Armed Forces Veterans Association
<b>RoCK</b>	Rainbow Community Kampuchea (Cambodia)
<b>SGRC</b>	Support Group and Resource Center on Sexuality Studies (Indonesia)
<b>Singapore</b>	Republic of Singapore
<b>SMART</b>	Specific, measurable, achievable, realistic, timely (objectives)
<b>SMS</b>	Short messaging service (text messaging)
<b>SOGIESC</b>	Sexual orientation, gender identity and expression, sexual characteristics
<b>SPD</b>	Democracy Struggle Solidarity
<b>STI</b>	Sexually-transmitted infection
<b>Thailand</b>	Kingdom of Thailand



<b>Timor-Leste</b>	Democratic Republic of Timor-Leste
<b>UPR</b>	Universal Periodic Review
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNAIDS</b>	Joint United Nations Programme on HIV/AIDS
<b>UNDP</b>	United Nations Development Programme
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organisation
<b>UNFPA</b>	United Nations Population Fund
<b>UNMIT</b>	United Nations Mission in Timor-Leste
<b>UN Women</b>	United Nations Entity for Gender Equality and the Empowerment of Women
<b>USA</b>	United States of America
<b>USAID</b>	United States Agency for International Development
<b>Viet Nam</b>	Socialist Republic of Viet Nam
<b>Yogyakarta Principles</b>	Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity
<b>YP+10</b>	Yogyakarta Principles plus 10

# Introduction

## Context

Just over a decade ago, the United Nations (**UN**) introduced a new process for periodically evaluating the human rights performances of each its Member States. That process, known as the Universal Periodic Review (**UPR**), has now completed two full cycles of review and commenced its third cycle in May 2017. During the first two cycles, all Member States received two rounds of recommendations from their fellow Member States regarding how they could bolster their domestic human rights protections.

Likewise just over a decade ago, Southeast Asia played host to a significant summit in Yogyakarta, Indonesia. At this summit, international human rights experts agreed on a set of principles setting out the applicable international human rights laws in the context of sexual orientation, gender identity, gender expression, and sexual characteristics (**SOGIESC**). These principles are known as the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (**Yogyakarta Principles**). They are the first attempt to comprehensively map the human rights landscape for lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) communities worldwide. On 10 November 2017, the Yogyakarta Principles plus 10 (**YP+10**) were adopted, supplementing the initial Yogyakarta Principles with emerging developments in international human rights law.

## Purpose and Methodology

Coinciding with the release of the YP+10, this report, **Revealing the Rainbow** (the **Report**), comprehensively analyses the human rights situation of Southeast Asia's LGBTIQ Communities and their defenders in Southeast Asia in the decade since the UPR and the Yogyakarta Principles were introduced. It documents both the legal framework and the factual reality in each of the 11 Southeast Asian States.

This Report aims to foster dialogue to improve the human rights situation of Southeast Asia's LGBTIQ communities and their defenders. In particular, it hopes to empower civil society organisations (**CSOs**) and UN Member States to fully capitalise on the UPR process as a means through which such improvements may be achieved. To that end, the Report offers State-specific as well as general recommendations for CSOs and recommending States to consider when engaging in the third UPR cycle for each Southeast Asian State.

This Report's baseline measure is the UPR recommendations accepted by each Southeast Asian State, namely the Nation of Brunei (**Brunei**), the Kingdom of Cambodia (**Cambodia**), the Republic of Indonesia (**Indonesia**), the Lao People's Democratic Republic (**Laos**), Malaysia, the

Republic of the Union of Myanmar (**Myanmar**), the Republic of the Philippines (**Philippines**), the Republic of Singapore (**Singapore**), the Kingdom of Thailand (**Thailand**), the Democratic Republic of Timor-Leste (**Timor-Leste**), and the Socialist Republic of Viet Nam (**Viet Nam**).<sup>1</sup>

This Report focuses on identifying State practice consistent with, or which fails to fulfil, recommendations that the State accepted during their first and second UPR cycles and that impact on their LGBTIQ community and its defenders.

For both Indonesia and the Philippines, this Report additionally considers UPR recommendations accepted during each State's third UPR reviews, since these took place earlier this year.

A detailed Country Profile is included for each of the 11 Southeast Asian States. Each Country Profile includes:

1. **An overview of all UPR cycles the State has undergone.** This overview summarises the national reports prepared by the State under review; submissions from CSOs; the recommendations received by the State at the conclusion of each review; and the State's position in respect of those recommendations.

## About the UPR Process

The UPR process, created in 2006, is the only peer-to-peer review system allowing an assessment of the human rights situation in all 193 Member States of the UN by their fellow Member States. States are reviewed every 4-5 years based on three reports:

- a national report prepared by the State under review;
- a compilation of all CSOs' submissions; and
- a compilation of all UN documents relevant to the human rights situation of the State under review.

Each UPR cycle is presided over by three States, known as a "troika." It begins with a presentation by the State under review of its national report, followed by an Interactive Dialogue between that State and representatives of any other State willing to speak. At any time, the State under review may respond to questions and recommendations from other States.

The UPR review results in the preparation and publication by the UN of a report summarising the Interactive Dialogue; responses from the State under review; and the recommendations made to the State under review.

**Source and Further Information:** UN Office of the High Commissioner for Human Rights, "Basic facts about the UPR", Website, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> (last visited 16 November 2017).

<sup>1</sup> The situation of LGBTIQ HRDs in each country profile is based on research, with a focus on UN official documentation, national legislation, CSO reports, press reports, and social media.

2. **A detailed analysis of the evolution of the human rights situation of the State's LGBTIQ community and its HRDs.** This analysis is conducted in light of the recommendations made during the UPR process, and organised thematically in accordance with key applicable human rights.
3. **Recommendations to CSOs and UN Member States for ways to engage with the State in its upcoming UPR cycle.** These recommendations are offered in light of the human rights situation in each State, and the State's demonstrated receptiveness to the UPR process thus far.

Importantly, this Report looks not only at the situation of LGBTIQ communities in Southeast Asia but also particularly at that of those communities' defenders — referred to in this Report as human rights defenders (**HRDs**).

In light of the focus on HRDs, each Country Profile also features text of an interview between Destination Justice and an LGBTIQ HRD working in the State under analysis. Each interview provides invaluable first-hand insights into the reality of HRDs' work; the impact of their voice in the society; and the impact of the UPR process within their State.

All interviewees were asked similar, open-ended questions that were provided to them in advance and adapted to their personal situation and that of their State. The interviewees consented to being interviewed and to the publication of their interview in the relevant sections of this Report. They were also given the opportunity to amend their interview transcripts for accuracy or security purposes, and to suppress their identifying details.

## Terminology

**HRD:** Destination Justice relies on the definition of HRD given by the UN in the Declaration on the Right and Responsibility of Individuals Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (**DHRD**),<sup>2</sup> and by the European Union in the EU Guidelines on Human Rights Defenders.<sup>3</sup> Accordingly, the concept of HRD relied on in this Report incorporates the following concepts:

- HRDs are individuals, groups or associations that voluntarily or through paid work promote and/or protect universally-recognised human rights and fundamental freedoms, by employing peaceful means.

<sup>2</sup> UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, 9 December 1998, A/RES/53/144, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx> (last visited 16 November 2017). See further United Nations Human Rights Office of the High Commissioner, "Declaration on Human Rights Defenders", available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx> (last visited 16 November 2017).

<sup>3</sup> European Union, *Ensuring Protection - European Union Guidelines on Human Rights Defenders*, 14 June 2004, 10056/1/04, available at [https://eeas.europa.eu/sites/eeas/files/eu\\_guidelines\\_hrd\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/eu_guidelines_hrd_en.pdf) (last visited 16 November 2017).

- HRDs can be identified by what they do, the environments in which they operate, and the principles they uphold.
- HRDs support fundamental rights and freedoms as diverse as the right to life and the right to an adequate standard of living. They work at the local, national, or international level, and their activities might differ greatly. Some investigate and report human rights violations in order to prevent further abuses. Some focus on supporting and encouraging States to fulfil their human rights obligations. Others offer capacity-building support to communities or favour access to information in order to increase public participation in local decision-making processes.

Ultimately, this Report considers an HRD as anyone striving achieve positive change in terms of the protection or promotion of human rights. Students, civil society activists, religious leaders, journalists, lawyers, doctors and medical professionals, and trade unionists are often identified as HRDs. However, this list is not exhaustive.

**LGBTIQ:** Acronyms used to identify the queer community vary throughout Southeast Asian States and between different CSOs and individuals. For consistency, this Report utilises the broad acronym "LGBTIQ" to encompass the various identities of the Southeast Asian queer community, except where a cited source uses a different acronym.

**SOGIESC:** Traditionally, 'SOGIE' has been used to denote sexual orientation (SO), gender identity (GI) and gender expression (E). However, with a slowly-evolving understanding of diverse identities within the LGBTIQ community in Southeast Asia, this Report instead uses the expanded acronym SOGIESC, since this also includes the notion of sexual characteristics (SC).

## Key Findings

It has been said that the UPR process is an "unprecedented opportunity for SOGIESC HRDs to raise human rights violations against LGBTIQ people and proactively engage with governments."<sup>4</sup> However, despite evidence of the growing visibility of LGBTIQ rights and HRDs within the UPR process, this Report identifies significant room for improvement within Southeast Asia in terms of the protection of LGBTIQ communities and their defenders.

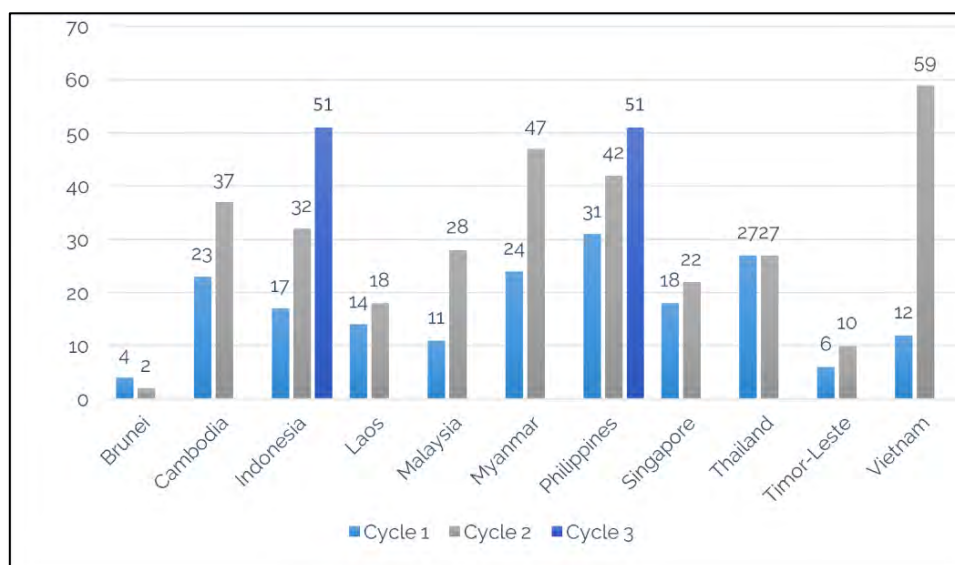
As outlined in this Report, regional progress in this regard has been notably inconsistent. Some Southeast Asian States have indeed acted on accepted UPR recommendations. This Report describes multiple instances of States taking significant steps towards reforming their legal framework to include express protections of their LGBTIQ community and LGBTIQ HRDs, and implementing policies aimed at eliminating discriminatory practices.

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<sup>4</sup> "Sexual Orientation, Gender Identity and Expression, and Sex Characteristics at the Universal Periodic Review", ARC International, IBAHRI & ILGA, November 2016, p. 100, available at [http://ilga.org/downloads/SOGIESC\\_at\\_UPR\\_report.pdf](http://ilga.org/downloads/SOGIESC_at_UPR_report.pdf) (last visited 16 November 2017).

At the same time, the Report also details numerous situations where States in Southeast Asia have actively limited the rights of the LGBTIQ community and LGBTIQ HRDs. Harsh laws and criminal sentences have been imposed for consensual same-sex sexual relations. Discrimination and serious abuses continue to occur. Institutions and officials have adopted positions unsupportive of LGBTIQ rights. Multiple States have also restricted the fundamental freedoms of LGBTIQ HRDs, including freedoms of assembly, expression, and association. On a regional level, therefore, LGBTIQ communities and their HRDs remain at risk overall – and with them, the future of LGBTIQ rights in Southeast Asia.

Nevertheless, causes for optimism remain. Notably, this Report shows Southeast Asia's LGBTIQ communities becoming increasingly visible, particularly in terms of participation in the cultural life of the community, and its HRDs becoming ever more active. In addition, and as illustrated in **Figure 1**, in all but two instances, the number of CSO submissions increased in successive UPR rounds for each Southeast Asian State. This amounts to a region-wide trend of increased – and increasingly visible – engagement on LGBTIQ rights, and by HRDs.



**Figure 1: Southeast Asian Stakeholder UPR Submissions in Each Cycle**

States also continue to engage in the UPR, and to do so in a seemingly genuine manner. This demonstrates the ongoing viability of the UPR process as an avenue for human rights advocacy and reform, at least at this stage. Accordingly, Destination Justice urges LGBTIQ communities and their HRDs, and CSOs and recommending UN Member States, to build the momentum for the UPR process as an advocacy platform, and to engage with the process more innovatively and tenaciously than ever during the third UPR cycle and beyond.

# Legal Background

This Report analyses the situation of LGBTIQs and their defenders in Southeast Asia through specific human rights. These rights vary for each State depending on the particularities of that State's situation. This Legal Background section prefaces the State-by-State situational analysis by explaining how these rights are commonly interpreted under international law, with reference to the relevant international human rights instruments that protects these rights.

Chief among relevant human rights instruments are the long-standing Universal Declaration of Human Rights (**UDHR**),<sup>1</sup> the International Covenant on Civil and Political Rights (**ICCPR**),<sup>2</sup> and the International Covenant on Economic, Social and Cultural Rights (**ICESCR**).<sup>3</sup> These are the foundational modern human rights instruments commonly known as the "Human Rights Charter;" are binding on states that are party to them; and enshrine several rights today considered to have the status of customary international law.

Relevant rights are also found in the likewise-binding Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**) and the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**).<sup>4</sup>

In addition to these instruments, guidance is also offered by several recent, non-binding but instructive instruments. These include the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (**Yogyakarta Principles**);<sup>5</sup> the ASEAN Human Rights Declaration (**AHRD**), applicable to all ASEAN member states;<sup>6</sup> and the Declaration on the Right and Responsibility of Individuals,

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<sup>1</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf) (last visited 16 November 2017).

<sup>2</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf> (last visited 16 November 2017).

<sup>3</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf> (last visited 16 November 2017).

<sup>4</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf> (last visited 16 November 2017).

<sup>5</sup> International Commission of Jurists (**ICJ**), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, available at [http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles\\_en.pdf](http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles_en.pdf) (last visited 16 November 2017).

<sup>6</sup> Association of Southeast Asian Nations (**ASEAN**), *ASEAN Human Rights Declaration and Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration*, February 2013, available at [http://www.asean.org/storage/images/ASEAN\\_RTK\\_2014/6\\_AHRD\\_Booklet.pdf](http://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf) (last visited 16 November 2017).

Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (**DHRD**).<sup>7</sup>

Southeast Asian States generally have a low rate of ratification of international human rights instruments, as highlighted in **Annex 1**. In addition, the ambivalent regional approach to LGBTIQ rights can be seen in the region's varied voting record regarding the establishment of a UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, set out in **Annex 2**. Nevertheless, this presents civil society organisations (**CSOs**) and recommending States with a significant opportunity during the upcoming UPR cycle to urge each Southeast Asian State to take the important step towards strengthening human rights protection for their LGBTIQ communities and LGBTIQ HRDs, including by ratifying the relevant instruments and showing their support for the office of the newly-established Independent Expert.

The following human rights and fundamental freedoms are discussed in the Country Profiles in this Report, and accordingly briefly analysed and explained immediately below:

- Right to equality and freedom from discrimination;
- Right to liberty and security of the person;
- Prohibition of torture;
- Right to life;
- Right to privacy;
- Right to work;
- Freedom of opinion and expression;
- Freedom of peaceful assembly and association;
- Right to participate in public life; and
- Right to participate in the cultural life of the community.

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<sup>7</sup> United Nations, General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, 9 December 1998, A/RES/53/144, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx> (last visited 16 November 2017).



## Right to Equality and Freedom from Discrimination

### Legal Foundation

**UDHR:** Articles 1 and 2

**ICCPR:** Article 2(1) and 26

**ICESCR:** Article 2(2)

**CEDAW:** Article 1

**Yogyakarta Principles:** Principle 2

**AHRD:** Principles 1 and 2

Article 1 of the UDHR confirms that everyone is "born free and equal," while Article 2 serves as the core source of protection for the right to equality and to non-discrimination.

The United Nations Human Rights Committee (**CCPR**), which interprets and monitors implementation of the ICCPR, has considered cases where individuals have successfully relied on the right to equality and non-discrimination to

challenge the legality of alleged discrimination by a State. As a result of these cases, the CCPR has held in effect that "sexual orientation" is a recognised ground of prohibited discrimination.<sup>8</sup> Furthermore, the CCPR has also expressed concerns about the criminalisation of consensual sexual acts between adults of the same sex,<sup>9</sup> and called for the decriminalisation of these acts.<sup>10</sup>

Similarly, the UN Committee on Economic, Social, and Cultural Rights (**CESCR**), which interprets and monitors implementation of the ICESCR, has held that Article 2(2) of the ICESCR prohibits discrimination on the basis of sexual orientation and that "State parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights."<sup>11</sup>

The UN Committee on the Elimination of Discrimination against Women (**CEDAWC**) has referred to sexual orientation as part of the term "sex,"<sup>12</sup> declaring that:

<sup>8</sup> UN Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, 31 March 1994, U.N. Doc. CCPR/C/50/D/488/1992, para. 8.7, available at <http://hrlibrary.umn.edu/undocs/html/vws488.htm> (last visited 17 November 2017). See also UN Human Rights Committee, *Mr Edward Young v. Australia*, Communication No. 941/2000, 6 August 2003, U.N. Doc. CCPR/C/78/D/941/2000, available at <http://www.equalrightstrust.org/content/ert-case-summary-mr-edward-young-v-australia-communication-no-9412000> (last visited 17 November 2017); UN Human Rights Committee, *X v. Colombia*, Communication No. 1361/2005, 30 March 2007, U.N. Doc. A/62/40, Vol. II, at 293, available at [http://www.worldcourts.com/hrc/eng/decisions/2007.03.30\\_X\\_v\\_Colombia.htm](http://www.worldcourts.com/hrc/eng/decisions/2007.03.30_X_v_Colombia.htm) (last visited 17 November 2017).

<sup>9</sup> UN Human Rights Committee, *Concluding observations of the Human Rights Committee: Barbados*, 11 May 2007, U.N. Doc. CCPR/C/BRB/CO/3, para. 13, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsncLNPIYsTOQN5Sbrs%2f8hyEn2VHMCAZO%2fCyDY96cYPxM8cQ8bbavViNnuV6YU3gyHlmioCM17RLf4esahJ5a1%2bxQTspR9eqkzThSr5nhgfhp> (last visited 17 November 2017).

<sup>10</sup> UN Human Rights Committee, *Concluding observations of the Human Rights Committee: United States of America*, 18 December 2006, U.N. Doc. CCPR/C/USA/CO/3/Rev.1, para. 9, available at <https://www.state.gov/documents/organization/133837.pdf> (last visited 17 November 2017).

<sup>11</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights*, 2 July 2009, vol. U.N. Doc. E/C.12/GC/20, para. 32, available at <http://undocs.org/E/C.12/GC/20> (last visited 17 November 2017).

<sup>12</sup> UN Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 19 October 2010, U.N. Doc. CEDAW/C/2010/47/GC.2, para. 18, available at

Intersectionality is a basic concept for understanding the scope of the general obligations of State parties contained in Article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as [...] sexual orientation and gender identity.<sup>13</sup>

The AHRD prohibits discrimination. However, it uses the term "gender," not "sex." Though the efforts of LGBTIQ HRDs to include "sexual orientation" in the AHRD were unsuccessful, "gender" can arguably be interpreted broadly so as to include transgender persons and other groups within the LGBTIQ conceptual framework.<sup>14</sup>

Principle 2 of the Yogyakarta Principles prohibits discrimination on the basis of sexual orientation or gender identity. It describes in detail what such discrimination could entail:

Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.

## Right to Liberty and Security of Person

### Legal Foundation

**UDHR:** Article 3

**ICCPR:** Article 9

**CEDAW:** Article 11(f)

**Yogyakarta Principles:** Principle 5

**AHRD:** Article 12

**DHRD:** Article 12(2)

Article 3 of the UDHR guarantees everyone the fundamental right to "liberty and security," a right echoed in several other international instruments. The CCPR has clarified that this protection specifically extends to cover LGBTIQ people, and that:

[T]he right to personal security also obliges States parties to take appropriate measures [...] to protect individuals from foreseeable

threats to life or bodily integrity proceeding from any governmental or private actors [...] **States parties must respond appropriately to patterns of violence against**

<http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GC2.pdf> (last visited 17 November 2017).

<sup>13</sup> UN Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28*, 19 October 2010, U.N. Doc. CEDAW/C/2010/47/GC.2, para. 18.

<sup>14</sup> "The ASEAN Human Rights Declaration: A Legal Analysis", American Bar Association (ABA) Rule of Law Initiative, 2014, p. 11, available at <http://www.americanbar.org/content/dam/aba/directories/roli/asean/asean-human-rights-declaration-legal-analysis-2014.authcheckdam.pdf> (last visited 17 November 2017).

**categories of victims such as [...] violence against persons on the basis of their sexual orientation or gender identity.<sup>15</sup>**

The CCPR has also stipulated that “[a]rrest or detention on discriminatory grounds [...] is also in principle arbitrary.”<sup>16</sup>

Article 12 of the AHRD<sup>17</sup> refers to the “right to **personal** liberty and security”<sup>18</sup> instead of the more common “right to liberty and security of person.”<sup>19</sup> Nevertheless, this difference may have minimal practical impact, given that the Inter-American Human Rights system, which also refers to “personal liberty and security”, has interpreted this phrase consistently with the UDHR and the ICCPR, and has relied on the American Convention’s prohibitions against torture and inhumane treatment to define the right to security of person.<sup>20</sup>

Principle 12 of the Yogyakarta Principles clarifies that not only does the right to liberty and security of the person apply regardless of sexual orientation and gender identity, but that States have an obligation to prevent and punish acts of violence and harassment based on sexual orientation and gender identity and to combat the prejudices that underlie such violence.

In the context of HRDs specifically, Article 12(2) of the DHRD provides that States:

shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights [of HRDs].

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<sup>15</sup> UN Human Rights Committee, *General Comment No. 35, Article 9 (Liberty and security of person)*, 16 December 2014, U.N. Doc. CCPR/C/GC/35, para. 9, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en) (last visited 17 November 2017) (emphasis added). See also UN Human Rights Committee, *Concluding observations: El Salvador*, 22 July 2003, U.N. Doc. CCPR/CO/78/SLV, para. 16, available at [https://www.reproductiverights.org/sites/default/files/documents/XSL\\_CO.ElSalvador2003.pdf](https://www.reproductiverights.org/sites/default/files/documents/XSL_CO.ElSalvador2003.pdf) (last visited 17 November 2017).

<sup>16</sup> UN Human Rights Committee, *O’Neill and Quinn v. Ireland, Views, Communication No. 1314/2004*, U.N. Doc. CCPR/C/87/D/1314/2004, para. 8.5 (finding no violation), available at <http://hrlibrary.umn.edu/undocs/1314-2004.html> (last visited 17 November 2017). See also UN Human Rights Committee, *Consideration of Reports Submitted by Parties Under Article 40 of the Covenant, Concluding Observations, Honduras*, 14 September 2006, U.N. Doc. CCPR/C/HND/CO/1, para. 13 (detention on the basis of sexual orientation), available at [http://www.bayefsky.com/pdf/ireland\\_t5\\_iccpr\\_1314\\_2004.pdf](http://www.bayefsky.com/pdf/ireland_t5_iccpr_1314_2004.pdf) (last visited 17 November 2017); UN Human Rights Committee, *Consideration of Reports Submitted by Parties Under Article 40 of the Covenant, Concluding Observations, Cameroon*, 4 August 2010, U.N. Doc. CCPR/C/CMR/CO/4, para. 12 (imprisonment for consensual same-sex activities of adults), available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRICAqhKb7yhsoEohhB%2fObfneRA6ucrf7cJW7%2bXtug1Hgeug0eK7ZvX2rAdy89HyiCyHPP41ofPuv76q%2bomwP4FHeGtD2fr6HhReFNC3aUgl6Zgcnx9KpuRN> (last visited 17 November 2017).

<sup>17</sup> *ASEAN Human Rights Declaration*, 18 November 2012, Principle 12, available at [http://aichr.org/?dl\\_name=ASEAN-Human-Rights-Declaration.pdf](http://aichr.org/?dl_name=ASEAN-Human-Rights-Declaration.pdf) (last visited 17 November 2017).

<sup>18</sup> *ASEAN Human Rights Declaration*, 18 November 2012, Principle 12 (emphasis added).

<sup>19</sup> “The ASEAN Human Rights Declaration: A Legal Analysis”, ABA Rule of Law Analysis, 2014, p. 29.

<sup>20</sup> “The ASEAN Human Rights Declaration: A Legal Analysis”, ABA Rule of Law Analysis, 2014, p. 29.

## Right to Life

### Legal Foundation

**UDHR:** Article 3

**ICCPR:** Article 6

**ICCPR OP2:** Generally

**Yogyakarta Principles:** Principle 4

**AHRD:** Article 11

**DHRD:** Article 12(2)

The right to life is a foundational human right. The UDHR, ICCPR, Yogyakarta Principles and AHRD prohibit arbitrary deprivation of life. In General Comment 6, the CCPR has stressed that accordingly, “no derogation [from this] is permitted even in time of public emergency which threatens the life of the nation.”<sup>21</sup> Moreover, States Parties are not to interpret the right to life narrowly but must act proactively to protect the right of life.<sup>22</sup>

While international law does not obligate states to abolish the death penalty altogether, this is desirable. Indeed, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (**ICCPR OP2**) is specifically dedicated to the abolition of the death penalty. Under its Article 1, its States Parties undertake not to execute anyone within their jurisdiction and to take all necessary measures to abolish the death penalty. Of the Southeast Asian States profiled in this Report, those which retain the death penalty are Brunei, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand, and Viet Nam, among which Brunei, Laos and Thailand have had *de facto* moratoria in place on in fact applying the death penalty since 1957, 1989 and 2009, respectively.<sup>23</sup>

Under Article 6 of the ICCPR, states that do impose the death penalty must limit its application to only the most serious of offences and cannot impose it on persons under 18 years of age or on pregnant women. As the CCPR stressed in General Comment 6, the death penalty must be a truly exceptional measure of punishment.<sup>24</sup> Considering the UN’s stance that same-sex sexual relations should not be criminalised whatsoever,<sup>25</sup> such acts would not, therefore, be considered a “most serious crime.”

<sup>21</sup> UN Human Rights Committee, *General Comment No. 6, Article 6, Right to Life*, 30 April 1982, U.N. Doc. HRI/GEN/1/Rev.1 at 6, para. 1, available at <http://hrlibrary.umn.edu/peace/docs/hrcom6.htm> (last visited 17 November 2017).

<sup>22</sup> UN Human Rights Committee, *General Comment No. 6*, 30 April 1982, HRI/GEN/1/Rev.1 at 6, para. 1.

<sup>23</sup> “Death Penalty”, Amnesty International, available at <https://www.amnesty.org/en/what-we-do/death-penalty/> (last visited 22 November 2017); “UN concerned at broad application of death penalty in Brunei’s revised penal code” UN News Center, 11 April 2014, available at <http://www.un.org/apps/news/story.asp?NewsID=47552#.Wht4XUqWZPZ> (last visited 27 November 2017); ICJ, “Serious setback: Singapore breaks moratorium on death penalty”, 18 July 2014, available at <https://www.icj.org/serious-setback-singapore-breaks-moratorium-on-death-penalty/> (last visited 27 November 2017).

<sup>24</sup> UN Human Rights Committee, *General Comment No. 6*, 30 April 1982, HRI/GEN/1/Rev.1 at 6, para. 7.

<sup>25</sup> See UN High Commissioner for Refugees, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, para. II.B.i.19, available at <http://www.refworld.org/pdfid/48abd5660.pdf> (last visited 17 November 2017).

Article 12(2) of the DHRD requires states to take all necessary measures to protect HRDs against acts which would include arbitrary deprivation of life.

## Prohibition of Torture

### Legal Foundation

**UDHR:** Article 5

**ICCPR:** Article 7 and 2(3)

**CAT:** Article 2 and generally

**Yogyakarta Principles:** Principle 10

**AHRD:** Article 14

**DHRD:** Article 12(2)

Torture is prohibited under a wide range of international instruments, including a specific convention: the CAT. Article 1 of the CAT defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has

committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

In General Comment 20, the CCPR has detailed the types of treatment included within the ICCPR's definition of torture under Article 7. Torture includes mental and physical suffering, as well as corporal punishment and extended solitary confinement.<sup>26</sup> Moreover, the use of medical experimentation without consent is within the scope of the definition of torture.<sup>27</sup> Finally, any information gained through torturous acts is impermissible.<sup>28</sup>

In terms of discriminatory grounds, Principle 10 of the Yogyakarta Principles specifically obligates States to prevent and punish torture or inhuman and degrading treatment or punishment undertaken on the basis of the victim's sexual orientation or gender identity.

Article 2 of the CAT unequivocally provides that "[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." In addition, Article 3 of the CAT prohibits States from "expell[ing] or return[ing] ('refouler') an individual to another State where

<sup>26</sup> UN Human Rights Committee, *General Comment No. 20: Article 7, Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 March 1992, U.N. Doc. HRI/GEN/1/Rev.1 at 30, para. 5, available at <http://hrlibrary.umn.edu/gencomm/hrcom20.htm> (last visited 17 November 2017).

<sup>27</sup> UN Human Rights Committee, *General Comment No. 20: Article 7*, 10 March 1992, U.N. Doc. HRI/GEN/1/Rev.1 at 30, para. 6.

<sup>28</sup> UN Human Rights Committee, *General Comment No. 20: Article 7*, 10 March 1992, U.N. Doc. HRI/GEN/1/Rev.1 at 30, para. 12.

there are substantial grounds for believing that he or she would be in danger of being subjected to torture."<sup>29</sup>

Article 12(2) of the DHRD requires States to take all necessary measures to protect HRDs against acts which would include torture.

## Right to Privacy

### Legal Foundation

**UDHR:** Article 12

**ICCPR:** Article 17

**Yogyakarta Principles:** Principle 6

**AHRD:** Article 12

**DHRD:** Article 12(2)

Article 12 of the UDHR describes the right to privacy as a prohibition on "arbitrary interference with [one's] privacy, family, home or correspondence" and on "attacks upon his honour and reputation."

The CCPR has held that a law criminalising sodomy "violates the right to privacy in the International Covenant on Civil and Political

Rights",<sup>30</sup> showing that same-sex sexual relations fall within the scope of the right to privacy.

Principle 6 of the Yogyakarta Principles adds that for LGBTIQ persons specifically:

[t]he right to privacy [in addition] ordinarily includes the choice to disclose or not to disclose information relating to one's sexual orientation or gender identity, as well as decisions and choices regarding both one's own body and consensual sexual and other relations with others.

In July 2015, Joseph Cannataci was appointed the first Special Rapporteur on the right to privacy for an initial three-year term.<sup>31</sup> His mandate includes the requirement "[t]o integrate a gender perspective throughout [his] work."<sup>32</sup>

Article 12(2) of the DHRD requires states to take all necessary measures to protect HRDs against acts which would include violations of HRDs' right to privacy.

<sup>29</sup> *V.L. v. Switzerland*, Communication No. 262/2005, U.N. Doc. CAT/C/37/D/262/2005 (2007), para. 8.2, available at <http://hrlibrary.umn.edu/cat/decisions/262-2005.html> (last visited 17 November 2017).

<sup>30</sup> Arvind Narrain, "Sexual Orientation and Gender Identity: A Necessary Conceptual Framework for Advancing Rights?", Arc International, 2016, p. 1, available at <http://arc-international.net/global-advocacy/human-rights-council/sexual-orientation-and-gender-identity-a-necessary-conceptual-framework-for-advancing-rights/> (last visited 17 November 2017).

<sup>31</sup> "Special Rapporteur on the right to privacy", OHCHR, 2015, available at <http://www.ohchr.org/EN/Issues/Privacy/SR/Pages/SRPrivacyIndex.aspx> (last visited 17 November 2017).

<sup>32</sup> UN Human Rights Council, *Resolution 28/16, The right to privacy in the digital age*, 1 April 2015, U.N. Doc. A/HRC/RES/28/16, para. 4(f), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/068/78/PDF/G1506878.pdf?OpenElement> (last visited 17 November 2017).

## Right to Work

### Legal Foundation

**UDHR:** Article 23

**ICESCR:** Article 6

**CEDAW:** Article 11

**Yogyakarta Principles:** Principle 12

**AHRD:** Article 27

**DHRD:** Articles 5, 9 and 11

General Comment 18 sets out the CESCR's interpretation of the right to work under the ICESCR. It emphasises that the ICESCR prohibits "any discrimination in access to and maintenance of employment on the grounds of [...] sex, [...] or sexual orientation, [...] which has the intention or effect of impairing or nullifying exercise of the right to work on a basis of equality."<sup>33</sup>

Likewise, the CCPR has highlighted that when LGBTIQ people face discrimination based on their sexual orientation that impacts their access to employment, this violates Articles 2 and 26 of the ICCPR.<sup>34</sup>

Article 11 of CEDAW obligates States Parties to eliminate discrimination against women and ensure equality between men and women in respect of the right to work. Under Article 11, this includes, among other things, equal opportunity and access to different professions, and equal pay. Concerning LGBTIQ people, Principle 12 of the Yogyakarta Principles provides that:

[e]veryone has the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity.

The right of HRDs to work is set out under Article 11 of the DHRD, which explains that "[e]veryone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession." Likewise, Article 9 specifically protects HRDs' right to provide "professionally qualified legal assistance or other forms of assistance and advice in defending human rights and fundamental freedoms." In addition, Article 5 makes it clear that HRDs are able to work within NGOs, associations and groups, and to communicate with NGOs and intergovernmental groups.

<sup>33</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 18, Article 6, The Right to Work*, 6 February 2006, U.N. Doc. E/C.12/GC/18, para. 12(b), available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1a0SzabooXTdlmnsJZZVQfUKxXVisd7Dae%2FCu%2B13J25Nha7l9NlwYZ%2FTmK57O%2FSr7TB2hbCAidyVu5x7XcqjNXn44LZ52C%2BikX8AGQrVylc> (last visited 17 November 2017).

<sup>34</sup> UN Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding observations of the Human Rights Committee - Islamic Republic of Iran*, 29 November 2011, U.N. Doc. CCPR/C/IRN/CO/3, para. 10, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsieXFSudRZs%2fX1ZaMqUUOS%2fToSmm6S6YKot4yT9B73L17SA%2feiYbnx2ciO3WOOtYqEMTBg8uMHZzpeXwyMOLwCLLxzMK2fpd8zvXOHOVZsw> (last visited 17 November 2017).

## Freedom of Opinion and Expression

### Legal Foundation

**UDHR:** Article 19

**ICCPR:** Article 19

**Yogyakarta Principles:** Principle 20

**AHRD:** Article 24

**DHRD:** Articles 6 and 7

The right to freedom of opinion and expression is at the heart of an active civil society and essential to the work of HRDs,<sup>35</sup> including LGBTIQ HRDs.

In General Comment 34, the CCPR has explained that the freedom includes, among other things:

the right to seek, receive and impart information and ideas, [...] the expression and receipt of communications of every form of idea and opinion capable of transmission to others, [...] political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse, [...] and commercial advertising.<sup>36</sup>

However, Article 19(3) of the ICCPR permits narrow restrictions to the freedom of opinion and expression. Such exceptions must be "provided by law" and be "necessary for respect of the rights or reputations of others or for the protection of national security or of public order, or of public health or morals." Any limitations must conform to the strict tests of necessity and proportionality, and the State should provide details of the restrictions.<sup>37</sup>

In 1982, the CCPR permitted restrictions on a television and radio program discussing homosexuality<sup>38</sup> on the basis that the State was owed a "certain margin of discretion" in matters of public morals. Nevertheless, the CCPR equally pointed out that the conception and contents of "public morals" are relative and changing,<sup>39</sup> and State-imposed restrictions on freedom of expression must allow for this and should not be applied so as to perpetuate prejudice or promote intolerance.<sup>40</sup>

Principle 19 of the Yogyakarta Principles explains how in the context of LGBTIQ people, freedom of opinion and expression includes:

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<sup>35</sup> "Born Free and Equal: Sexual Orientation and Gender Identity in International Law", OHCHR, 2012, p. 55, available at <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf> (last visited 17 November 2017).

<sup>36</sup> UN Human Rights Committee, *General Comment No. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, U.N. Doc. CCPR/C/GC/34, para. 11, available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> (last visited 17 November 2017).

<sup>37</sup> UN Human Rights Committee, *General Comment No. 34, Article 19*, 12 September 2011, CCPR/C/GC/34, para. 27.

<sup>38</sup> "Chapter four: Freedom of Assembly, Association and Expression", International Commission of Jurists (ICJ), 2012, available at <http://www.icj.org/sogi-casebook-introduction/chapter-four-freedom-of-assembly-association-and-expression/> (last visited 17 November 2017).

<sup>39</sup> "Chapter four: Freedom of Assembly, Association and Expression", ICJ, 2012.

<sup>40</sup> "HRC: Hertzberg and Others v. Finland", Article 19, 6 February 2008, available at <https://www.article19.org/resources.php/resource/3236/en/hrc:-hertzberg-and-others-v.-finland> (last visited 17 November 2017).



the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.

Article 6 of the DHRD emphasises that HRDs not only enjoy the same freedom of opinion and expression as everyone else, but in addition, that this freedom extends specifically to matters concerning human rights and fundamental freedoms, and that HRDs have the right to “draw public attention to those matters.” Article 7 notes that HRDs additionally have the right “to develop and discuss new human rights ideas and principles and to advocate their acceptance.”

## Freedom of Association and Assembly

### Legal Foundation

**UDHR:** Article 20

**ICCPR:** Articles 21 and 22

**ICESCR:** Article 8

**Yogyakarta Principles:** Principle 20

**AHRD:** Articles 24 and 27(2)

**DHRD:** Articles 5 and 12

The freedom of association and assembly and the freedom of opinion and expression are fundamentally intertwined.<sup>41</sup>

The ICCPR explains that a person's freedom to associate with others includes the right to join and form trade unions (Article 21), and that freedom of assembly refers to the freedom to peacefully assemble (Article 22). Article 8 of the ICESCR elaborates on the freedom of

association, specifically in terms of the freedom to join and form trade unions.

As with the freedom of opinion and association, under the ICCPR and ICESCR, it is possible for states to impose narrow restrictions on the freedom of association and assembly provided that these are “provided by law;” “necessary for respect of the rights or reputations of others or for the protection of national security or of public order, or of public health or morals;” and deemed to be necessary and proportionate.

In the context of LGBTIQ persons, Principle 20 of the Yogyakarta Principles clarifies that the freedom of association and assembly extends to “associations based on sexual orientation or gender identity” and work on “the rights of persons of diverse sexual orientations and gender identities.” It further explains that where States impose limitations on the freedom of association and assembly:

[s]tates shall [...] ensure in particular that notions of public order, public morality, public health and public security are not employed to restrict any exercise of the rights to

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<sup>41</sup> UN Human Rights Committee, *General Comment No. 34, Article 19*, 12 September 2011, CCPR/C/GC/34, para. 4.

peaceful assembly and association solely on the basis that it affirms diverse sexual orientations or gender identities.

Article 24 of the AHRD guarantees freedom of peaceful assembly. While there is no general protection of the freedom of association, Article 27(2) protects the specific right to join and form trade unions and "limits the obligation to the extent permitted by national law and practice."<sup>42</sup> There are no official annotations of the AHRD or *travaux préparatoires* explaining what the former inaugural UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Vitit Muntarbhorn, described as the AHRD's reinforcement of "ASEAN values" by omitting "various internationally guaranteed rights, particularly the right to freedom of association."<sup>43</sup> Such lack of transparency was a key critique of the AHRD, and prevents the development of a clear understanding of ASEAN's rationale for omitting a general freedom to associate.<sup>44</sup>

Article 5 of the DHRD clarifies that HRDs' freedom of association and assembly specifically includes the right to form, join, and participate in NGOs, associations, and groups, and to communicate with NGOs and intergovernmental organisations. In addition, Article 12 clarifies that not only do HRDs have the freedom to undertake peaceful activities against violations of human rights and fundamental freedoms, but to be protected against acts by the State or others that violate or affect the enjoyment of human rights and fundamental freedoms.

## Right to Participate in Public Life

### Legal Foundation

**UDHR:** Article 21

**ICCPR:** Article 25

**CEDAW:** Article 7

**Yogyakarta Principles:** Principle 25

**AHRD:** Article 25

**DHRD:** Article 8

As the UDHR and ICCPR set out, the right to participate in public affairs includes the right to take part in the government of the State — directly as an elected representative, as well as through elected representatives. Governments must be driven by the will of the people as expressed through periodic and genuine elections with secret ballots and universal and

<sup>42</sup> Sharan Burrow & Noriyuki Suzuki, "Asia Pacific Statement On ASEAN Human Rights Declaration", International Trade Union Confederation, 28 November 2012, available at [https://www.ituc-csi.org/IMG/pdf/ituc\\_statement\\_on\\_asean\\_human\\_rights\\_declaration\\_final\\_2\\_.pdf](https://www.ituc-csi.org/IMG/pdf/ituc_statement_on_asean_human_rights_declaration_final_2_.pdf) (last visited 22 November 2017).

<sup>43</sup> Vitit Muntarbhorn, "'Asean human rights law' taking shape", Bangkok Post, 11 May 2017, available at <https://www.pressreader.com/thailand/bangkok-post/20170511/281719794500835> (last visited 21 November 2017).

<sup>44</sup> Sriprapha Petcharamesree, "The ASEAN Human Rights Architecture: Its Development and Challenges", *The Equal Rights Review*, Vol. Eleven, 2013, para. 4, available at <http://www.equalrightstrust.org/ertdocumentbank/Sriprapha%20Petcharamesree%20ERR11.pdf> (last visited 22 November 2017); Human Rights Watch, "Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration", November 2012, available at <https://www.hrw.org/news/2012/11/19/civil-society-denounces-adoption-flawed-asean-human-rights-declaration> (last visited 22 November 2017); "Statement: Less than Adequate: AICHR consultation on ASEAN Human Rights Declaration", Article 19, 21 June 2012, available at <https://www.article19.org/resources.php/resource/3338/en/less-than-adequate-aichr-consultation-on-asean-human-rights-declaration> (last visited 22 November 2017).

equal suffrage. All people must also have equal access to public service.

The CCPR in General Comment 25 explained the right to participate in public life protects the rights of “every citizen” and that “no distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>45</sup> General Comment 25 also notes that the right to participate in public life includes “exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves [which] is supported by ensuring freedom of expression, assembly and association.”

Article 7 of CEDAW emphasises that in the context of the right to participate in public life, States have an obligation to ensure the equality of women with men. Similarly, Principle 25 of the Yogyakarta Principles provides that the right to participate in public life should not discriminate on the basis of sexual orientation or gender identity.

Article 8 of the DHRD explains that as for HRDs, the right to participate in public life also specifically includes the right:

to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

## Right to Participate in the Cultural Life of the Community

### Legal Foundation

**UDHR:** Article 27

**ICCPR:** Article 27

**ICESCR:** Article 15

**CEDAW:** Article 13(c)

**Yogyakarta Principles:** Principle 26

**AHRD:** Article 32

The right to participate in the cultural life of the community is set out primarily in Article 27 of the UDHR and Article 15 of the ICESCR. The CESCR, in General Comment 21, has explained that this right is a freedom which requires States not to interfere with the exercise of cultural practices and access to cultural goods, and simultaneously requires States to protect peoples’ ability to exercise this right.<sup>46</sup> Furthermore, the ICESCR “prohibit[s] any

<sup>45</sup> UN Human Rights Committee, *General Comment No. 25, Article 25, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, 12 July 1996, U.N. Doc. CCPR/C/21/Rev.1/Add.7, para. 3, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2F21%2FRev.1%2FAdd.7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2F21%2FRev.1%2FAdd.7&Lang=en) (last visited 17 November 2017).

<sup>46</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)*, 21 December 2009, U.N. Doc. E/C.12/GC/21, para. 6, available at <http://www.refworld.org/docid/4ed35bae2.html> (last visited 17 November 2017).

discrimination in the exercise of the right of everyone to take part in cultural life on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."<sup>47</sup>

Article 13(c) of CEDAW ensures the right of women to equality with men in terms of participation in cultural life, which it describes as including recreational activities, sports, and all other aspects. Principle 26 of the Yogyakarta Principles similarly emphasises that the right to equal participation in public life is a right enjoyed by everyone regardless of sexual orientation and gender identity. Moreover, the Principle explains that the right includes the right to express diverse sexual orientation and gender identity, and obliges states to foster opportunities for all people to participate in public life and to:

[f]oster dialogue between, and mutual respect among, proponents of the various cultural groups present within the State, including among groups that hold different views on matters of sexual orientation and gender identity, consistently with respect for [...] human rights [...].

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<sup>47</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 21, Right of everyone to take part in cultural life*, 21 December 2009, U.N. Doc. E/C.12/GC/21, paras. 21-22.

# Brunei: Country Profile

## Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

### Introduction

#### UPR Cycles

**First UPR Cycle:** 8 December 2009

**Second UPR Cycle:** 2 May 2014

**Third UPR Cycle:** April/May 2019

The first and second Universal Periodic Review (UPR) cycles for the Nation of Brunei (Brunei) expressly discussed its lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) community, though not LGBTIQ human rights defenders (HRDs). However, UPR recommendations to strengthen the protection

and promotion of LGBTIQ rights in Brunei have consistently failed to enjoy Brunei's support.

Brunei is reportedly<sup>1</sup> one of the few Association of Southeast Asian Nation (ASEAN) States that refused to include a clause protecting LGBTIQ rights in the ASEAN Human Rights Declaration (AHRD).<sup>2</sup> Indeed, this Country Profile outlines how the LGBTIQ community in Brunei is at risk, most notably through the introduction of the Sharia Penal Code that will eventually impose even more stringent penalties on homosexual conduct, including death by stoning.<sup>3</sup> HRDs working on LGBTIQ rights are likewise vulnerable, with limited protections for freedoms of opinion and expression in practice.

"[T]he situation for LGBT will only improve if the United Nations will focus more specifically on LGBT rights. Because, in reality, while the situation is not as bad as most would assume, we are still at risk."

**Aziq Azman,  
Community Leader**

<sup>1</sup> Opponents to the SOGI clause are not officially known. See "ASEAN Human Rights Declaration and the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration (AHRD)", ASEAN, 2013, available at [http://www.asean.org/storage/images/ASEAN\\_RTK\\_2014/6\\_AHRD\\_Booklet.pdf](http://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf) (last visited 26 June 2017).

<sup>2</sup> "Sexual orientation and gender identity issues excluded from draft ASEAN human rights declaration", Fridae, 14 September 2012, available at [https://queeramenesty.ch/docs/Fridae\\_20120914\\_SOGI\\_excluded\\_from\\_draft\\_ASEAN\\_human\\_rights\\_declaration.pdf](https://queeramenesty.ch/docs/Fridae_20120914_SOGI_excluded_from_draft_ASEAN_human_rights_declaration.pdf) (last visited 26 June 2017); "LGBTIQ rights should be excluded", MalaysiaKini, 10 September 2012, available at <http://www.malaysiakini.com/letters/208463> (last visited 26 June 2017); "Sexual orientation and gender identity issues excluded from draft ASEAN human rights declaration", Fridae - Connecting gay Asia, 14 September 2012, available at <http://www.fridae.asia/gay-news/2012/09/14/11928.sexual-orientation-and-gender-identity-issues-excluded-from-draft-asean-human-rights-declaration> (last visited 26 June 2017).

<sup>3</sup> Other countries, such as Malaysia, have included *sharia* law in parts of their territory. In Malaysia, some states passed *sharia* criminal codes which are only symbolic and remain unimplemented due to the Federal Constitution. See e.g. Rudolph Peters & Peri Bearman (ed.), "The Ashgate Research Companion to Islamic Law", Ashgate, 2014, p. 240, available at [https://books.google.com.kh/books?id=iBR7BAAAQBAJ&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com.kh/books?id=iBR7BAAAQBAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false) (last visited 26 June 2017).

As indicated in the recommendations outlined at the end of this chapter, civil society organisations (CSOs) and recommending States have an opportunity, in the lead-up to Brunei's third UPR cycle in April/May 2019 (and in particular, the submission of stakeholder reports by 20 September 2018),<sup>4</sup> to work towards developing improved UPR recommendations that focus on the universality and benefit to Brunei of various proposed reforms.

## Past UPR Cycles for Brunei

### First UPR Cycle (8 December 2009)

**National Report Filed:**<sup>5</sup> Brunei's national report for the first UPR was published on 9 September 2009. It did not mention either the LGBTIQ community or HRDs. It did, however, state that NGOs present in Brunei had helped in "ensuring social equality."<sup>6</sup>

**Stakeholders Submissions Made:**<sup>7</sup> The summary of the 4 stakeholders' submissions was published on 21 July 2009. Stakeholders mentioned the LGBTIQ community but not LGBTIQ HRDs specifically. They expressed concern over laws permitting the death penalty and corporal punishment;<sup>8</sup> criminalising "carnal intercourse against the order of nature;"<sup>9</sup> and restricting freedom of expression and assembly.<sup>10</sup> They also noted the absence of any registered CSO dealing with human rights issues in Brunei.<sup>11</sup>

#### First UPR Cycle for Brunei: Recommendations Received

In its first UPR, held in December 2009, Brunei received recommendations directly and indirectly relevant to the LGBTIQ community and LGBTIQ HRDs:

- Decriminalise same-sex relationships (Sweden, Canada, Spain) and repeal the criminalisation of "carnal intercourse" to ensure the non-discrimination of LGBT individuals (The Netherlands).
- Establish a moratorium on executions with a view to abolishing the death penalty (Portugal, Italy, Brazil, Chile) and abolish the death penalty permanently (France, Spain, Argentina, Slovakia).

<sup>4</sup> "3rd UPR cycle: contributions and participation of 'other stakeholders' in the UPR", OHCHR, 22 May 2017, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx> (last visited 21 August 2017).

<sup>5</sup> *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Brunei Darussalam*, U.N. Doc. A/HRC/WG.6/6/BRN/1, 9 September 2009, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/BN/A\\_HRC\\_WG6\\_6\\_BRN\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/BN/A_HRC_WG6_6_BRN_1_E.pdf) (last visited 26 June 2017).

<sup>6</sup> First UPR cycle: *National Report*, Brunei, para. 19.

<sup>7</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human: Brunei Darussalam*, U.N. Doc. A/HRC/WG.6/6/BRN/3, 21 July 2009, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/BN/A\\_HRC\\_WG6\\_6\\_BRN\\_3\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/BN/A_HRC_WG6_6_BRN_3_E.pdf) (last visited 26 June 2017).

<sup>8</sup> First UPR cycle: *Stakeholders' Summary*, Brunei, paras. 5, 7.

<sup>9</sup> First UPR cycle: *Stakeholders' Summary*, Brunei, para. 10.

<sup>10</sup> First UPR cycle: *Stakeholders' Summary*, Brunei, paras. 19-20.

<sup>11</sup> First UPR cycle: *Stakeholders' Summary*, Brunei, para. 21.

- Prohibit corporal punishment (Germany, Italy, France, Chile).
- Establish a national human rights institution, in accordance with the Paris Principles, to provide additional protection for the human rights of its citizens (New Zealand, Malaysia, Egypt).
- Ensure full freedom of expression (Sweden, Canada, Norway, United States of America).
- Ensure that the procedures governing registration of civil society organisations are transparent, non-discriminatory, expeditious and inexpensive (Norway).
- Continue efforts in promoting and protecting human rights while taking into account Brunei's traditional and family values (Oman, Islamic Republic of Iran, Syrian Arab Republic) and not be intimidated by suggestions on social norms that are controversial, non-universal and specific to certain societies (Bangladesh).

**Source:** *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam*, U.N. Doc. A/HRC/13/14, 4 January 2010, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/101/19/PDF/G1010119.pdf?OpenElement> (last visited 26 June 2017).

**Comments Received; Response to Recommendations:** During the UPR Interactive Dialogue, Brunei received specific comments from delegations concerning the criminalisation of “carnal intercourse against the order of nature” and same-sex relationships<sup>12</sup> and the state of the freedom of expression in the State.<sup>13</sup> Recommendations concerning the decriminalisation of same-sex relationships, the prohibition of corporal punishment and the abolition of the death penalty did not enjoy the support of Brunei.<sup>14</sup> Brunei explained that tradition and cultural factors play an important role in sexual-related issues,<sup>15</sup> and that although capital punishment is not applied in practice, such a sanction is reserved for “the most severe and serious crimes.”<sup>16</sup>

On establishing a national human rights institution (**NHRI**), Brunei noted that CSOs and non-governmental organisations (**NGOs**) are already represented in Brunei's inter-agency consultative mechanism on human rights<sup>17</sup> and did not support the recommendation on this topic. Likewise, Brunei did not support the recommendations about freedom of expression and opinion, including freedom of the media.<sup>18</sup>

Concerning the registration of CSOs, Brunei simply explained that the legislation already in place (The Societies Order 2005) already sets the requirements for registration of any moral

<sup>12</sup> First UPR cycle: *Report of the Working Group*, Brunei, paras. 30, 48.

<sup>13</sup> First UPR cycle: *Report of the Working Group*, Brunei, paras. 44, 48, 51, 62, 64.

<sup>14</sup> This is standard diplomatic language commonly used by States under review to declare that they do not accept a given recommendation.

<sup>15</sup> First UPR cycle: *Report of the Working Group*, Brunei, para. 84.

<sup>16</sup> First UPR cycle: *Report of the Working Group*, Brunei, para. 87.

<sup>17</sup> First UPR cycle: *Report of the Working Group*, Brunei, para. 78.

<sup>18</sup> First UPR cycle: *Report of the Working Group*, Brunei, paras. 90.21-90.27.

entity, that failure to do so may result in a refusal, and that decisions can be appealed within 30 days from the date of the decision.<sup>19</sup> In fact, the sole relevant recommendation Brunei formally accepted was the recommendation in respect of the promotion of traditional and family values of the State.<sup>20</sup>

## Second UPR Cycle (2 May 2014)

**National Report Filed:**<sup>21</sup> Brunei's national report for the second UPR was published on 30 January 2014. It did not mention the LGBTIQ community or LGBTIQ HRDs. However, it generally noted that Brunei "works closely with NGOs in enhancing awareness on human rights related issues."<sup>22</sup> It also stated that a Special Committee on Immoral Behaviour had been established since Brunei saw "immoral behaviour" as a social issue needing to be addressed.<sup>23</sup> In addition, various laws were introduced or amended, such as the Sharia Penal Code Order to deal with *sharia* crimes and the Penal Code to include "offences related to the outraging of one's modesty."<sup>24</sup> The report further emphasised the family institution as the basic core of society.<sup>25</sup>

**Stakeholders Submissions Made:**<sup>26</sup> The summary of the 2 stakeholders' submissions was published on 29 January 2014. It did not mention either the LGBTIQ community or LGBTIQ HRDs. Stakeholders mainly expressed concerns over laws permitting corporal punishment, especially in the relation to the punishment of children.<sup>27</sup>

### Second UPR Cycle for Brunei: Recommendations Received

In its second UPR, held in May 2014, Brunei received recommendations directly and indirectly relevant to the LGBTIQ community and LGBTIQ HRDs:

- Repeal the criminalisation of same-sex relationships (Spain, Canada, France) and sections of the Penal Code that prevent LGBT persons from having equal rights (The Netherlands).

<sup>19</sup> First UPR cycle: *Report of the Working Group*, Brunei, para. 91.21; *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/13/14/Add.1, 19 March 2010, para. 21, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/160/29/PDF/G1416029.pdf?OpenElement> (last visited 26 June 2017).

<sup>20</sup> First UPR cycle: *Report of the Working Group*, Brunei, para. 89.10.

<sup>21</sup> *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Brunei Darussalam*, U.N. Doc. A/HRC/WG.6/19/BRN/1, 30 January 2014, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/106/65/PDF/G1410665.pdf?OpenElement> (last visited 26 June 2017).

<sup>22</sup> Second UPR cycle: *National Report*, Brunei, para. 109.

<sup>23</sup> Second UPR cycle: *National Report*, Brunei, para. 8.

<sup>24</sup> Second UPR cycle: *National Report*, Brunei, para. 9.

<sup>25</sup> Second UPR cycle: *National Report*, Brunei, para. 31.

<sup>26</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Brunei Darussalam*, U.N. Doc. A/HRC/WG.6/19/BRN/3, 29 January 2014, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BNIndex.aspx> (last visited 26 June 2017).

<sup>27</sup> Second UPR Cycle: *Stakeholder's Summary*, Brunei, paras. 3-5, 9-10.



- Decriminalise sexual activity between consenting adults (Czech Republic).
- Ensure that the provisions and the application of the Sharia Penal Code Order remain in strict compliance with human rights law (Italy, Ireland, Australia).
- Reconsider the use of corporal and capital punishment under the Sharia Penal Code (Australia).
- Prohibit corporal punishment (Uruguay, Costa Rica) and ratify CAT (Tunisia, Australia, Czech Republic, Djibouti, France, Sierra Leone, Sweden).
- Maintain the current *de facto* moratorium on the death penalty (The Netherlands, France, Australia, Czech Republic, Portugal, Uruguay, United Kingdom of Great Britain and Northern Ireland) and withdraw the amendments to the Penal Code that introduce the death penalty (The Netherlands).
- Ensure full freedom of expression and end media censorship (Sweden).
- Initiate reforms to bring freedom of expression and opinion in line with international standards (Tunisia, Slovenia, Canada, Italy, Belgium, United States of America).
- Establish a national human rights commission [NHRI] in conformity with the Paris Principles (Tunisia, United Kingdom of Great Britain and Northern Ireland, India, Egypt).
- Pursue social policies in line with its traditional family values (Bangladesh).

**Source:** *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam*, U.N. Doc. A/HRC/27/11, 7 July 2014, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/075/30/PDF/G1407530.pdf?OpenElement> (last visited 26 June 2017).

**Comments Received; Response to Recommendations:** During the UPR Interactive Dialogue, Brunei received comments from delegations suggesting that it decriminalise same-sex sexual relations. However, Brunei maintained its position from the first UPR by refusing to amend legislation that criminalises same-sex sexual relations and provides for the death penalty and corporal punishment.<sup>28</sup>

Brunei also indirectly denied the necessity to address noted deficiencies in its application of the freedom of expression<sup>29</sup> and assembly because “[t]here is a need to balance freedom of expression with the need to protect people from being defamed. The current provisions of the legislation are sufficient to protect such freedom and maintain public order.”<sup>30</sup> The

<sup>28</sup> Second UPR cycle: *Report of the Working Group*, Brunei, paras. 50, 85.

<sup>29</sup> Second UPR cycle: *Report of the Working Group*, Brunei, paras. 60, 71, 98-99.

<sup>30</sup> Second UPR cycle: *Report of the Working Group*, Brunei, paras. 113.43-113.46; *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/27/11/Add.1, 10 September 2014, para. 113.43, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/160/29/PDF/G1416029.pdf?OpenElement> (last visited 26 June 2017).

establishment of an NHRI<sup>31</sup> and the request of ensuring compliance of the Sharia Penal Code Order with human rights principles<sup>32</sup> were not considered by Brunei. Ultimately, and as with the first UPR, the only recommendation that Brunei accepted concerned the safeguarding of traditional family values.

## Situation of the LGBTIQ Community and its HRDs in Brunei

### Freedom of Opinion and Expression

**Limitations on LGBTIQ Advocacy:** LGBTIQ advocacy in the public sphere in Brunei appears to be non-existent. The few reports on the situation of LGBTIQ rights in the State — mostly from international sources — demonstrate the practical restrictions imposed on freedom of expression in Brunei. In 2015, when the Huffington Post launched its “10-part series on LGBT rights in Southeast Asia,” it noted that “Brunei was the only country in ASEAN where not a single LGBT person or advocate was willing to step forward to share their story,” even on an anonymous basis.<sup>33</sup>

Indeed, the Brunei Project, the only independent human rights organisation active in Brunei that monitors and reports on the human rights situation including LGBTIQ rights, acts in complete secrecy. Neither the Facebook page of the group,<sup>34</sup> nor its official website<sup>35</sup> contains information identifying HRDs. One of the few platforms in which HRDs and members of the LGBTIQ community reportedly contact each other is through the application “Grindr.”<sup>36</sup>

**Threats Towards LGBTIQ HRDs:** In 2015, the only known visible LGBTIQ HRD currently living in Brunei, Aziq Azman, posted a comment on a YouTube video boycotting a Beverly Hills Hotel owned by Sultan Hassanal Bolkiah of Brunei because of the State's anti-LGBTIQ policies. Azman criticised the application of *sharia* law and its implications for the LGBTIQ community, among other minorities.<sup>37</sup> His comment was later reproduced on a local Facebook page in Brunei, triggering hateful responses from Facebook users,<sup>38</sup> including threats of deportation, detention, and physical harm.<sup>39</sup> According to Azman, this reaction showed that “the violation

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<sup>31</sup> Second UPR cycle: *Report of the Working Group*, Brunei, paras. 113.85-113.87.

<sup>32</sup> Second UPR cycle: *Report of the Working Group*, Brunei, paras. 63, 71, 113.58, 113.60, 133.65.

<sup>33</sup> Dominique Mosbergen, “Brunei's LGBT Community Faces Terrifying Future”, Huffington Post, 15 October 2015, available at [http://www.huffingtonpost.com/entry/lgbt-brunei\\_us\\_561501f9e4b0fad1591a1167?gmeipb9](http://www.huffingtonpost.com/entry/lgbt-brunei_us_561501f9e4b0fad1591a1167?gmeipb9) (last visited 26 June 2017).

<sup>34</sup> “The Brunei Project”, Facebook Page, available at <https://www.facebook.com/thebruneiproject/> (last visited 26 June 2017).

<sup>35</sup> “The Brunei Project”, Facebook Page.

<sup>36</sup> Dominique Mosbergen, “Brunei's LGBT Community Faces Terrifying Future”, Huffington Post, 15 October 2015.

<sup>37</sup> “Beverly Hills Hotel Boycott for Sultan's Gay Bash”, YouTube, 24 April 2014, available at <https://www.youtube.com/watch?v=ft5C9zHFLbQ> (last visited 26 June 2017).

<sup>38</sup> “Warga Daerah Belait”, Facebook Page, 4 July 2015, available at [https://www.facebook.com/609796402431968/photos/a.610733409004934.1073741828.609796402431968/869064113171861/?type=1&refid=8&ft\\_qid.6168041585199672958%3Amf\\_story\\_key.231012057780306056%3AeligibleForSeeFirstBumping&\\_tn\\_=E](https://www.facebook.com/609796402431968/photos/a.610733409004934.1073741828.609796402431968/869064113171861/?type=1&refid=8&ft_qid.6168041585199672958%3Amf_story_key.231012057780306056%3AeligibleForSeeFirstBumping&_tn_=E) (last visited 26 June 2017).

<sup>39</sup> Aziq Azman, “Breaking Walls”, ASEAN SOGIE CAUCUS, Activist Voices, 27 June 2016, available at <https://aseansogiecaucus.org/activist->

of rights extends far beyond the scope of alternative sexualities and reaches further down into the oppression of free speech" in Brunei.<sup>40</sup>

## Right to Freely Participate in the Cultural Life of the Community

In a rare exception to the low profile of LGBTIQ activities in Brunei, in May 2016, the International Day against Homophobia, Transphobia, and Biphobia (**IDAHOT**) was marked for the first time in Brunei. The private community event, organised and funded by The Brunei Project, aimed to provide an opportunity for Brunei's isolated LGBTIQ community to network with regional LGBTIQ service providers.<sup>41</sup>

## Right to Security of the Person and Prohibition of Torture

**Criminalisation Under the Penal Code:** Section 377 of the Penal Code of Brunei,<sup>42</sup> a law established during Brunei's British colonial era, criminalises "unnatural offences", defined as a voluntary "carnal intercourse against the order of nature." The maximum penalty for such offences is up to 10 years' imprisonment and fines.

**Criminalisation Under *Sharia* Law:** In 2013, Sultan Hassanal Bolkiah of Brunei presented a three-phase plan introducing a new criminal code based on *sharia* law, applicable to both Muslims and non-Muslims in Brunei.<sup>43</sup> The third phase will include the introduction of harsher sanctions for homosexual conduct, such as death by stoning – the first law applying the death penalty in Brunei since 1957.<sup>44</sup> The move sparked a strong response from the United Nations (**UN**). Rupert Colville, spokesperson for the United Nations High Commissioner for Human Rights, said that "stoning people to death constitutes torture or other cruel, inhuman or degrading treatment or punishment and is thus clearly prohibited" under international law.<sup>45</sup>

While the second and third phases of the plan have been delayed until 2017 and 2018,<sup>46</sup> Sultan Hassanal Bolkiah has indicated that Brunei does not intend to abandon the project and

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[voices/74breakingwalls?highlight=WyJhemlxliwiYXptYW4iLCJhemlxIGF6bWFullo=](#) (last visited 18 September 2017).

<sup>40</sup> Aziq Azman, "Breaking Walls", ASEAN SOGIE CAUCUS, 27 June 2016.

<sup>41</sup> "International Day Against Homophobia, Transphobia & Biphobia Marked in Brunei for the First Time", The Brunei Project, 17 May 2016, available at [http://www.thebruneiproject.com/uploads/5/2/0/8/52087579/media\\_release.pdf](http://www.thebruneiproject.com/uploads/5/2/0/8/52087579/media_release.pdf) (last visited 26 June 2017).

<sup>42</sup> Brunei, Laws of Brunei, Penal Code Chapter 22, 1951, last revised 1 October 2001, available at [https://www.unodc.org/tldb/pdf/Brunei\\_Penal\\_Code\\_1951\\_Full\\_text.pdf](https://www.unodc.org/tldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf) (last visited 26 June 2017).

<sup>43</sup> Ankit Panda, "Brunei Becomes First East Asian State to Adopt Sharia Law", The Diplomat, 25 October 2013, available at <http://thediplomat.com/2013/10/brunei-becomes-first-east-asian-state-to-adopt-sharia-law/> (last visited 26 June 2017); Michelle Garcia, "Brunei Phasing In Antigay Law; Will Soon Allow Death by Stoning", The Advocate, 30 April 2014, available at <http://www.advocate.com/world/2014/04/30/brunei-phasing-antigay-law-will-soon-allow-death-stoning> (last visited 26 June 2017).

<sup>44</sup> "Brunei Phasing In Antigay Law; Will Soon Allow Death by Stoning", The Advocate, 30 April 2014.

<sup>45</sup> "UN concerned at broad application of death penalty in Brunei's revised penal code", UN News Centre, 11 April 2014, available at <http://www.un.org/apps/news/story.asp?NewsID=47552#.V8vT7Jhg600> (last visited 26 June 2017).

<sup>46</sup> Rasidah Hab & Rachel Thien, "Gov't targets Sharia CPC completion by June", The Brunei Times, 28 January 2016.

considers the delay to be unacceptable.<sup>47</sup> Phase 1 of the enforcement of the Sharia Penal Code has already led to the arrest and conviction of a Bruneian man for cross-dressing in 2015.<sup>48</sup> On 16 August 2016, another man was arrested for wearing women's clothes and is currently under investigation.<sup>49</sup> If found guilty under Section 198(1) of the new Sharia Penal Code, he faces a fine up to US\$1,000 and three months in prison.<sup>50</sup>

**Legislative Council:** Although Sultan Hassanal Bolkhiah exercises significant authority, Brunei has established a Legislative Council that includes representatives of Brunei's administrative districts and groups, including religious and social groups.<sup>51</sup> It performs a limited role as a forum for public discussion to review and approve proposed legislation.<sup>52</sup> It has been reported that the Legislative Council members are able to "speak their opinions freely", though with limitations.<sup>53</sup> Thus, the Legislative Council could potentially serve as an avenue through which to promote the enhancement in Brunei of the rights of the LGBTIQ community and HRDs.

## Conclusion

Since its first UPR, Brunei has consistently rejected UPR recommendations to decriminalise same-sex sexual relations, repeal the death penalty and corporal punishment, strengthen fundamental freedoms of opinion and expression, and establish an NHRI. Based on its comments during the UPR Interactive Dialogue, it appears that Brunei considers that such reforms would contradict its traditional values, particularly in respect of the family unit.

Together with a new Sharia Penal Code being gradually introduced which introduce harsher penalties for homosexual conduct, these factors render the LGBTIQ community and LGBTIQ rights-focused HRDs increasingly vulnerable at present. However, the Legislative Council could serve as a potential avenue through which to improve their situation.

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This article is no longer available since the abrupt closure of the newspaper "The Brunei Times" in November 2016. *For more information*, see "Brunei's second-largest daily newspaper shuts down abruptly", Reuters, 7 November 2016, available at <https://www.reuters.com/article/us-brunei-media/bruneis-second-largest-daily-newspaper-shuts-down-abruptly-idUSKBN1320YF> (last visited 18 September 2017); "Who buried The Brunei Times?", New Mandala, 9 November 2016, available at <http://www.newmandala.org/buried-brunei-times/> (last visited 18 September 2017).

<sup>47</sup> Rasidah Hab & Rachel Thien, "Sultan of Brunei questions delay in Syariah law enforcement", Islam In Indonesia, 1 March 2016, available at <https://islamindonesia.com/2016/03/01/sultan-of-brunei-questions-delay-in-syariah-law-enforcement/> (last visited 18 September 2017).

<sup>48</sup> Fadley Faisal, "Cross-dresser fined \$1,000 by Sharia Court", Borneo Bulletin, 11 March 2015, available at <http://borneobulletin.com.bn/cross-dresser-fined-1000-Sharia-court/> (last visited 26 June 2017).

<sup>49</sup> James Kon, "Cross-dresser arrested during joint operation", Borneo Bulletin, 16 August 2016, available at <http://borneobulletin.com.bn/cross-dresser-arrested-joint-operation/> (last visited 26 June 2017).

<sup>50</sup> James Kon, "Cross-dresser arrested during joint operation", Borneo Bulletin, 16 August 2016.

<sup>51</sup> "Freedom in the World: Brunei", Freedom House, 2015, available at <https://freedomhouse.org/report/freedom-world/2015/brunei> (last visited 21 August 2017).

<sup>52</sup> "Human Rights Reports for 2014: Brunei", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2015, pp. 1, 11, available at <https://www.state.gov/documents/organization/236638.pdf> (last visited 21 August 2017).

<sup>53</sup> "Human Rights Reports for 2014: Brunei", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2015, p. 6.

## Recommendations

In the lead-up to the third UPR review of Brunei in May 2019:

- CSOs should continue documenting violations and abuses endured by LGBTIQ persons and their defenders so as to provide recommending States and the relevant UN mechanisms with solid evidence-based information.
- CSOs and recommending States should lobby for an immediate moratorium on the introduction of harsher penalties for homosexual conduct in the Sharia Penal Code.
- CSOs and recommending States should emphasise the universality and benefit to Brunei of reforms such as the abolition of capital and corporal punishment, the decriminalisation of same-sex relationships and conduct, the strengthening of protections for freedom of opinion and expression, and the establishment of a national human rights institution.
- CSOs and recommending states should work collaboratively to develop UPR recommendations for the third cycle that emphasise the universality and benefit to Brunei of such reforms.

# Brunei: LGBTIQ HRD Interview

Human Rights of LGBTIQ  
Communities and HRDs:  
Frontline Voices



## Aziq Azman, Community Leader

### How did you become involved in lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ) rights work?

I started with environmental issues in 2009. I have also volunteered in an autism centre and in the future would love to work more on the issues faced by individuals with disabilities. To me, everything is related — not only LGBTIQ rights, but human rights as a whole.

The way I actually became involved in LGBTIQ rights work is actually a funny story and has been a very turbulent journey. It all started with a comment I posted on a YouTube video concerning Sultan Hassanal

Bolkiah: the video was all about his wealth and I felt that it was one-sided so I said a few things — not necessarily negative, but constructive criticism — to paint a more realistic picture of Brunei such as the fact that we have very little say in the infrastructure or expenditure. It is only a year later that my comment was noticed and it went viral: it was shared on social media, mainly via Facebook and WhatsApp.

I woke up one day, with calls from my concerned relatives and friends, worried about my security because I had criticised the Sultan. They asked me to take my comment down before ending up in jail. At that point, this thought occurred to me: how many people before me had been told to remove similar comments and forced to stay silent? So, instead of taking my comment down, I responded: my comment criticising the country did not mean I was against the country. I apologised for the offence I caused, but I did not apologise for the comments I made.

Following this, I was contacted by the Brunei Project and was later introduced to the ASEAN SOGIE Caucus. During a dinner, I met Professor Douglas Sanders, who had been part of the gay rights movement in the 60s. That is when I realised that I can take action. I wanted to be part of the solution, and not part of the problem. This led to the organisation of the International Day Against

Homophobia, Transphobia and Biphobia (IDAHOT) in Brunei for the first-time last year.

**Do you openly identify with a diverse sexuality or gender identity?**

By definition, I am a bisexual, but in Brunei it is easier to say that I am gay because people don't really understand what it means to be a bisexual. So, I just tell everyone that I am gay. I am fortunate enough to have a very supportive family — both of my parents know of my sexuality and relationships.

**Do you consider yourself a human rights defender (HRD)?**

Yes and no. Yes, by label, but at the same time, I disagree with the label. Being a human rights defender is not about the title, it is about ethical responsibility, about upholding the values of integrity and community that we should all strive to work towards as human beings.

**What have been the biggest challenges you have faced in advocating for LGBTIQ rights?**

Certain policies make it difficult, but I would say that the biggest challenge has been the people. I cannot blame them, they were raised with decades spent in a traditional mindset and culture. When they make comments or threats, they don't realise that we outspoken individuals and activists are actually fighting for the greater good. If you want, it is almost as if you are a superhero but the very people you are attempting to save are the ones standing on your cape.

**How would you overcome this challenge?**

Things are slightly improving now; LGBTIQ individuals are more involved in raising awareness and there are more avenues to have our voice heard, such as the United Nation's UPR process and the Legislative Council meetings of Brunei Darussalam. In general, people are aware of the possibilities but seem to disregard the fact that they indeed do have a say and can make their concerns heard through the right avenues.

I feel that this is largely in part due to their fear that even if they were to take the chance to express themselves, something which would be quite scary to some as Brunei at large is still a conservative country, the risk would not be worth it as they feel discouraged that their opinions would not create any sort of meaningful impact.

The new generation is more connected with the world: young people are able to see what goes on in other countries, see that there are other ways to live and also there are possibilities to take an active role in the social evolution of our country.

**Have you ever felt personally at risk because of your work?**

I felt at risk at times. The risks mostly come from the people rather than institutions. For example, when my comment on the YouTube video went viral, I received threats and insults such as that I was being "un-Islamic" and a "heretic." Thankfully, thus far it's only been talk.

But I have to admit, there has been at least one instance where the government did take action against me: in the aftermath of the

IDAHOT last year, my passport got barred by the KDN, the Brunei version of homeland security. But after some clarification, they were quick to respond that was not due to event I organised (IDAHOT), but because I held it on a government-owned property. Thankfully, they were quite understanding. I went to them and we had a very open talk where we discussed the event I organised, and I managed to clear the situation. I now feel more confident after talking with their representatives, that their main purpose was the betterment of human rights in Brunei, including the safety and security of the Bruneian people regardless of labels.

**What have been the most successful strategies or techniques you have used to create positive change?**

The most effective strategy I've had so far comes from engaging local individuals and supporting parties. It takes a unified effort; you can't just do it any one way. For example, while organising the IDAHOT in 2016, we engaged local individuals, such as LGBT people and allies, and outside parties, such as certain embassies who were crucial in facilitating the program. The best strategy is to have a global, unified movement with both internal and external actors. About 40 people attended the last IDAHOT — a success for its first year within Brunei.

**How do you think society has changed concerning LGBTIQ rights in Brunei in the past 5-10 years?**

The younger generation is part of a big change in the country. Many of them are educated abroad and experience a cultural shock there. They bring home the values

they saw abroad. It is slowly soaking into the local fabric, if you will; on a societal level, it is progressing, more people are open to the idea of LGBTIQ rights and people. However, activism still has a long way to go.

**What role has the law played in impacting LGBTIQ rights in Brunei? What role do you think it should play?**

So far, the laws have not played a very active role, either positively or negatively, in the LGBTIQ scope. Legally, we are being discriminated against — we do not have the same protections or rights as everyone else. However, fortunately it is mostly on paper and rarely enforced. Sadly, same-sex conduct is still criminalised, as an act against nature, a leftover from when Brunei was a protectorate of the colonies.

Another large impact was the role of the new Sharia Penal Code. The LGBT society in Brunei has gone deeper into hiding since phase 1 to protect themselves. Phases 2 and 3 of the plan to implement Sharia Penal Code have been delayed because of international pressure coming from bodies like the United Nations and lobbying of international human rights defenders and celebrities, but Phase 1 alone has caused a regression: people who had no problem about being open with their sexuality before feel the need to be less open about their sexual identities.

**What is the importance of *sharia* law on life of LGBTI people now?**

To clear any confusion, from the little research I've done I can gather that *sharia* law has long been a part of Brunei Law, since



at least 2008 if not earlier. What concerns most people is the introduction of the Sharia Penal Code in 2013. Thanks to the UN recommendations, not the whole of the new Sharia Penal Code has come into effect but it still raises concerns.

Although rarely enforced, there has been one case. Confusingly, the man was charged under *sharia* law but penalised under common law as penalties under *sharia* in regards to his conviction have yet, if ever, come into effect. A man was fined \$1,000 under the Sharia Penal Code Order after he pleaded guilty to cross-dressing in a public place. His charge was to be dressed like a woman and carry women's personal items in his bag. A *sharia* prosecutor was infamously quoted as saying "If this is not dealt with, it can lead to the spread of social disorder such as homosexuality, free sexual relations, drug abuse and so on."<sup>1</sup>

I do feel that there are more cases of legal discrimination against LGBT than we are being made aware of; this case was only one among others, the main problem with this being the not-free status of our media. Our only independent newspaper, The Brunei Times, was recently shut down for a multitude of reasons. I was fortunate enough to sit in on a private discussion between their employees and a representative of Freedom House, New York.

Moreover, the media here rarely criticises the government and almost never speak about actual newsworthy concerns. In this way the LGBT question is definitely a closed

subject and we do not have much real information about the impact of the Sharia Penal Code on vulnerable groups. On the contrary, the Internet is a good tool as there have been little restriction on its use. However, in general most local blogs report on cultural issues and tend to stray from touching on social issues.

### **Does Brunei's government do enough to protect LGBTIQ rights? Does civil society?**

The government is not being actively against us, and I praise their values for the Brunei denizens, however, the fact that there is no form of legal protection for the LGBT individuals or socio-political activists in general is an obstacle.

It extends far more to the general scope of human rights, such as freedom of expression and freedom of religion. There is now a Christmas ban due to *sharia* law, for example. Sadly, a more recent example in 2015 was the new limitations on the cultural celebration of the Chinese New Year: permits are now required. These permits are granted with certain conditions: dances are limited to certain hours outside of prayer times; venues are restricted to school halls, Chinese temples, or residences; only Chinese community members may be involved; and firecrackers cannot be used.

I think it is part of a more general crackdown on the agenda to protect the Muslim community. While there is nothing wrong with that, I feel like we are going to extreme lengths under the argument that they want

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<sup>1</sup> "Bruneian civil servant fined \$1,000 for cross-dressing", The Brunei Times, 11 March 2015, available at <http://web.archive.org/web/2015>

[0313161723/http://www.bt.com.bn/news-national/2015/03/11/bruneian-civil-servant-fined-1-000-cross-dressing](http://0313161723/http://www.bt.com.bn/news-national/2015/03/11/bruneian-civil-servant-fined-1-000-cross-dressing) (last visited 26 June 2017).

to prevent the temptation of other faiths to Muslims. If our faith is strong, the people will resist such temptations. However, I am not sure how these limitations are, if ever, enforced, but the very fact that they are on paper is disheartening.

During the 90s, the country was more open about religion and culture; now, the government seems to be increasingly xenophobic, not realising they are stripping not only basic human rights but the way of life for a significant portion of the resident population, up to 20,000 people according to the latest census! They should encourage the freedom of expression and religion for all and not deny that Brunei is a beautifully multicultural country.

### **How do you feel about recent activities and events in Brunei regarding LGBTIQ rights?**

In general, aside from LGBT issues, it is getting better. Brunei has just appointed the Legislative Council with more members from the public, and the people of Brunei are invited to voice their concerns through the council members. More women and younger people in the Legislative Council were included, and I feel this is a big step as we are seeing people who are not at a disconnect and are more in tune with the current issues. I personally am planning on playing a more active role in local politics this year and plan to attend their meetings as a public representative and have submitted my concerns to the council members.

Concerning the IDAHOT event last year, although the reactions were mostly positive, the government has kept a watch on us. But

for the most part, the government mostly tries to stay neutral on this topic, which at least is not a negative hindrance. I am definitely planning to organise the IDAHOT again — I am assessing the security risks at the moment and preparations are soon underway. As I said, it cannot be done without strong support on multiple fronts as the LGBTIQ are a vulnerable group.

### **Do you think the Universal Periodic Review (UPR) recommendations have an impact on Brunei? Do you think the recommendations lead governments to change policies to strengthen human rights protections?**

Sadly, the UPR recommendations have not had any major impact so far on the LGBTIQ issues we face here. They had an impact on more general issues, such as women's rights and a more transparent governance. But I feel like the situation for LGBT will only improve if the United Nations (**UN**) will focus more specifically on LGBT rights. Because, in reality, while the situation is not as bad as most would assume, we are still at risk.

### **Does civil society know how to use the UPR recommendations and comments for advocacy in Brunei?**

It is quite sad that most people are not even aware of the UPR process. Very few people know what is actually going on. But the mechanisms are there, it's just a matter of making them more accessible and understandable to the people. They need education on how they can play a more active role in the process and how to access it as a tool for positive change within the country. Perhaps an awareness video explaining the UPR process and showing

how the people can act in collaboration with the government for their rights, could be a great start.

**What gives you hope when looking to the future of LGBTIQ rights in Brunei?**

I have hope in the people. No matter who you are, who you worship, or who you love, I want, I believe in a community of inclusion and open-mindedness, a community that does not define itself by boundaries. I think that the best examples of this would be our neighbours Malaysia and Singapore. Yes, they do have their problems but at the same time, they cashed in on their diversity. The inclusion of various cultures is what led them to be strong. And it is a lesson we could learn here as well.

Closing our doors, without ever considering what we are missing out on and alienating the people who have left their home to search for a life here, could cost us so much down the road. I understand the country's values of culture and tradition, and I fully support preserving the past, but not while ignoring the possibilities of our future.

# Cambodia: Country Profile

## Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

### Introduction

#### UPR Cycles

**First UPR Cycle:** 1 December 2009

**Second UPR Cycle:** 24 January 2014

**Third UPR Cycle:** January/February 2019

Issues related to the lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) community and human rights defenders (**HRDs**) in the Kingdom of Cambodia (**Cambodia**) were raised in both Cambodia's first and second Universal Periodic Review (**UPR**) cycles. In its first

UPR, the Cambodian government reiterated its dedication to combating discrimination and supporting civil rights and freedoms. After its second UPR, Cambodia accepted some recommendations related to freedoms of expression, the eradication of gender stereotypes, and other human rights, although it only noted without supporting recommendations related to freedom of assembly.

As this Country Profile presents, Cambodia's LGBTIQ community and LGBTIQ HRDs enjoy relative visibility, with a wide range of LGBTIQ events taking place and with select support from among members and institutions of the Cambodian government. However, discriminatory laws and policies remain in place, as do resulting discriminatory practices including by the Cambodian police. In addition, the Law on Associations and Non-Governmental Organisations (**LANGO**) leaves LGBTIQ HRDs, like all HRDs in Cambodia generally, vulnerable. So, too, does the apparently-shrinking space for the freedoms of expression, thought, and participation in public life as evidenced by the Cambodian Supreme Court's forced recent closure of the leading opposition party, and the Cambodian government's closure or suspension of independent media outlets and civil society organisations (**CSOs**).

In the lead up to Cambodia's third UPR cycle in January/February 2019 (and in particular, the submission of stakeholder reports by 21 June 2018),<sup>1</sup> recommending States and CSOs have an opportunity to develop improved UPR recommendations that build on

"[T]his is my own dream, to change the system, so LGBT are so accepted that people do not need to talk about it anymore, and that no one ask LGBTs why they are LGBT."

**Srun Srorn,**  
**Co-Founder, CamASEAN**

<sup>1</sup> OHCHR, "3rd UPR cycle: contributions and participation of 'other stakeholders' in the UPR", 22 May 2017, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx> (last visited 21 August 2017).

progress made and aim to increase protection for the LGBTIQ community and their defenders in Cambodia.

## Past UPR Cycles for Cambodia

### First UPR Cycle (1 December 2009)

**National Report Filed:**<sup>2</sup> Cambodia's national report for the first UPR was published on 16 September 2009. While it did not mention HRDs or LGBTIQ issues, it affirmed a commitment to combating "all kinds of discrimination."<sup>3</sup> Moreover, it reaffirmed the right to freedom of expression<sup>4</sup> and support for "people to organize all public forums under the Constitution."<sup>5</sup>

**Stakeholders' Submissions Made:**<sup>6</sup> The summary of the 23 stakeholders' submissions was published on 9 September 2009. LGBTIQ issues were not explicitly mentioned. However, stakeholders commented on the increasingly vulnerable status of HRDs<sup>7</sup> and expressed concern over issues affecting the LGBTIQ community, including deteriorating freedom of expression<sup>8</sup> and diminished freedom of assembly, in particular, increased obstacles to peaceful demonstration.<sup>9</sup> It was recommended that the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression be invited to Cambodia.<sup>10</sup>

#### First UPR Cycle for Cambodia: Recommendations Received

In its first UPR held in December 2009, Cambodia received several recommendations primarily as relevant to HRDs but also to its LGBTIQ community:

- Promote human rights education and training at all levels, including for Government officials, in order to raise awareness about human rights (Thailand), and strengthen advocacy efforts to enhance public awareness of the human rights of vulnerable groups (Republic of Korea).
- Strengthen efforts to protect freedom of expression and the right of HRDs to conduct their work without hindrance or intimidation, including by safeguarding freedom of assembly and association (Sweden).

<sup>2</sup> National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Cambodia, U.N. Doc. A/HRC/WG.6/6/KHM/1, 16 September 2009, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/A\\_HRC\\_WG6\\_6\\_KHM\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/A_HRC_WG6_6_KHM_1_E.pdf) (last visited 4 July 2017).

<sup>3</sup> First UPR cycle: *National Report*, Cambodia, para. 107.

<sup>4</sup> First UPR cycle: *National Report*, Cambodia, para. 71.

<sup>5</sup> First UPR cycle: *National Report*, Cambodia, para. 73.

<sup>6</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Cambodia*, U.N. Doc. A/HRC/WG.6/6/KHM/3, 9 September 2009, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/A\\_HRC\\_WG6\\_6\\_KHM\\_3\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/A_HRC_WG6_6_KHM_3_E.pdf) (last visited 4 July 2017).

<sup>7</sup> First UPR cycle: *Stakeholders' Summary*, Cambodia, paras. 17, 27, 37.

<sup>8</sup> First UPR cycle: *Stakeholders' Summary*, Cambodia, para. 33.

<sup>9</sup> First UPR cycle: *Stakeholders' Summary*, Cambodia, para. 34.

<sup>10</sup> First UPR cycle: *Stakeholders' Summary*, Cambodia, para. 14.

- Facilitate the work of NGOs and other relevant civil society groups (Italy), and ensure that the draft law on NGOs does not make HRDs' working conditions more difficult (France).
- Develop a policy to protect HRDs (Brazil, Germany), including by effectively investigating and prosecuting crimes and violations against HRDs (Norway, Ireland), and by adopting appropriate measures to disseminate widely and ensure full observance of the Declaration on Human Rights Defenders (Norway).

**Source:** *Report of the Working Group on the Universal Periodic Review: Cambodia*, U.N. Doc. A/HRC/13/4, 4 January 2010, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/A\\_HRC\\_13\\_4\\_KHM\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/A_HRC_13_4_KHM_E.pdf) (last visited 4 July 2017).

**Comments Received; Response to Recommendations:** Cambodia accepted all recommendations made during the first UPR cycle.<sup>11</sup> However, during the UPR Interactive Dialogue, the Cambodian delegation did not substantively address peer countries' observations. Specific concerns were raised by various delegations in relation to the vulnerable status of HRDs<sup>12</sup> and freedom of expression.<sup>13</sup> In particular, Cambodia was asked how it intended to reconcile alleged restrictive approaches on the freedom of expression with its ICCPR obligations.<sup>14</sup> Cambodia responded that "Cambodians have largely enjoyed this right" and that the ICCPR allows for restrictions on the freedom of expression.<sup>15</sup>

## Second UPR Cycle (28 January 2014)

**National Report Filed:**<sup>16</sup> Cambodia's national report for the second UPR was published on 21 November 2013. The report did not directly mention the LGBTIQ community or HRDs, chiefly referring to existing Constitutional protections and affirming Cambodia's continued adherence to its various international obligations. The Cambodian government also stressed that it attaches high importance to freedom of expression.<sup>17</sup>

**Stakeholders' Submissions Made:**<sup>18</sup> The summary of the 37 stakeholders' submissions was published on 7 November 2013. Stakeholders expressed concern for HRDs and for the LGBTIQ

<sup>11</sup> *Report of the Human Rights Council on its Thirteenth Session*, U.N. Doc A/HRC/13/56, 8 February 2011, para. 356, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/117/56/PDF/G1111756.pdf?OpenElement> (last visited 4 July 2017).

<sup>12</sup> First UPR cycle: *Report of the Working Group*, Cambodia, paras. 74, 76-77.

<sup>13</sup> First UPR cycle: *Report of the Working Group*, Cambodia, paras. 30, 43, 61.

<sup>14</sup> First UPR cycle: *Report of the Working Group*, Cambodia, para. 76.

<sup>15</sup> First UPR cycle: *Report of the Working Group*, Cambodia, para. 57.

<sup>16</sup> *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Cambodia*, U.N. Doc. A/HRC/WG.6/18/KHM/1, 21 November 2013, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/187/29/PDF/G1318729.pdf?OpenElement> (last visited 4 July 2017).

<sup>17</sup> Second UPR cycle: *National Report*, Cambodia, para. 32.

<sup>18</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Cambodia*, U.N. Doc. A/HRC/WG.6/18/KHM/3, 7 November 2013, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/184/24/PDF/G1318424.pdf?OpenElement> (last visited 4 July 2017).

community. They noted the need for greater respect for freedom of expression, as HRDs continue to face threats, harassment, legal action and violence, including killings,<sup>19</sup> in addition to restrictions from a number of laws used to curtail freedom of expression and related rights, including the Criminal Code.<sup>20</sup> Stakeholder submissions also noted the government's lack of cooperation with the Special Rapporteur on the situation of human rights in Cambodia, with the Special Rapporteur being subjected to public attacks demanding an end to such United Nations (UN) human rights work.<sup>21</sup>

Stakeholders explicitly noted discrimination against LGBTIQ persons, who frequently report physical abuse and social exclusion.<sup>22</sup> The issues of detention centres, rape and assault by police,<sup>23</sup> and health service discrimination<sup>24</sup> were of particular concern. Stakeholders also noted the continued negative impact of the *Chbab Srey* gender code, which perpetuates stereotypes in particular about appropriate female gender roles.<sup>25</sup> It was recommended that Cambodia raise awareness of the rights of LGBTIQ people and ensure police respond appropriately to crimes against them.<sup>26</sup>

### **Second UPR Cycle for Cambodia: Recommendations Received**

In its second UPR held in January 2014, Cambodia received recommendations with respect to the democratic freedoms of civil society and HRDs, as well as gender-specific recommendations:

- Adopt legislative and other measures promoting freedom of expression (Canada and Switzerland), and take steps to bring Cambodia's laws and practices in-line with international human rights standards in relation to freedom of expression (Ireland).
- Ensure the right to defend and promote human rights (Colombia, Austria), including through the adoption of measures that promote the enjoyment of association and peaceful assembly (Germany); and ensuring peaceful demonstrations can occur safely and without fear of intimidation or excessive use of force (Canada, Switzerland and Czech Republic).
- Continue efforts for human rights education at all levels, including government (Pakistan).
- Implement all measures, including national awareness-raising campaigns, and efforts aimed at amending or eliminating patriarchal attitudes and stereotypes

<sup>19</sup> Second UPR cycle: *Stakeholders' Summary*, Cambodia, para. 35.

<sup>20</sup> Second UPR cycle: *Stakeholders' Summary*, Cambodia, para. 6.

<sup>21</sup> Second UPR cycle: *Stakeholders' Summary*, Cambodia, para. 12.

<sup>22</sup> Second UPR cycle: *Stakeholders' Summary*, Cambodia, para. 16.

<sup>23</sup> Second UPR cycle: *Stakeholders' Summary*, Cambodia, para. 16.

<sup>24</sup> Second UPR cycle: *Stakeholders' Summary*, Cambodia, para. 58.

<sup>25</sup> Second UPR cycle: *Stakeholders' Summary*, Cambodia, para. 15.

<sup>26</sup> Second UPR cycle: *Stakeholders' Summary*, Cambodia, para. 16.

discriminating against women, including those based on the *Chbab Srey* (Uruguay).

- Continue to combat discrimination suffered by the children of marginalized and vulnerable groups and eradicate gender-based stereotypes (Colombia).
- Recognise the importance of a diverse civil society in a democracy (Netherlands), and ensure a favourable climate for the activities of HRDs (Tunisia), including by protecting their rights (Germany and Belgium). This includes, prosecuting perpetrators of violence against them (France), impartially investigating cases of use of excessive force against protesters (Czech Republic), protecting HRDs from harassment and arbitrary arrest (Portugal), and reviewing cases against individuals detained because of exercising their right to freedom of expression (Denmark).

**Source:** *Report of the Working Group on the Universal Periodic Review: Cambodia*, U.N. Doc. A/HRC/13/4, 27 March 2014, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/127/27/PDF/G1412727.pdf?OpenElement> (last visited 4 July 2017).

**Comments Received; Response to Recommendations:** Though Colombia's broader recommendation to eradicate gender-based stereotypes and combat discrimination suffered by the children of marginalised and vulnerable groups did not enjoy Cambodia's support,<sup>27</sup> Cambodia did accept Uruguay's narrower recommendation concerning the elimination of patriarchal attitudes and stereotypes discriminating against women, including those based on the *Chbab Srey*.<sup>28</sup>

Notwithstanding comments in regard to the general deterioration of the human rights situation in Cambodia<sup>29</sup> — including reports of harassment of HRDs and protesters<sup>30</sup> and violations of the right of assembly<sup>31</sup> — Cambodia only noted the recommendation from Germany concerning freedom of assembly.<sup>32</sup> In particular, during the UPR Interactive Dialogue, government representatives only mentioned that the ban on demonstrations and public assembly was in line with the law and necessary to restore social order, stability, and security.<sup>33</sup>

<sup>27</sup> This is standard diplomatic language commonly used by States under review to declare that they do not accept a given recommendation. On Cambodia's response to the recommendation, see Second UPR cycle: *National Report*, Cambodia, para. 118.57; *Report of the Working Group on the Universal Periodic Review: Cambodia, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/26/16/Add.1, 25 June 2014, p. 2, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/066/09/PDF/G1406609.pdf?OpenElement> (last visited 17 July 2017).

<sup>28</sup> Second UPR cycle: *National Report*, Cambodia, para. 118.50.

<sup>29</sup> Second UPR cycle: *National Report*, Cambodia, paras. 30, 48, 66, 80.

<sup>30</sup> Second UPR cycle: *National Report*, Cambodia, paras. 68, 73, 101, 111-12.

<sup>31</sup> Second UPR cycle: *National Report*, Cambodia, paras. 35, 36, 73, 100.

<sup>32</sup> Second UPR cycle: *National Report*, Cambodia, para. 119.29; Second UPR cycle: *National Report, Addendum*, Cambodia, p. 2.

<sup>33</sup> Second UPR cycle: *National Report*, Cambodia, para. 53.



Finally, Cambodia accepted all other recommendations and emphasised the great efforts they had taken to work with civil society, including HRDs, stressing that the Cambodian Human Rights Committee had fully cooperated with the United Nations (UN) Office of the High Commissioner for Human Rights (OHCHR) and CSOs.<sup>34</sup>

## Situation of the LGBTIQ Community and its HRDs in Cambodia

### Freedom of Expression, Association, and Assembly

**LGBTIQ Events:** Pride celebrations in Cambodia began in 2003, expanding in 2009 to include week-long celebrations.<sup>35</sup> In 2010, pride celebrations occurred without official opposition, but in an environment lacking official support, with sporadic instances of 'morality' crackdowns remaining.<sup>36</sup> Phnom Penh's 2011 Pride Week was a success, with an estimated 1,300 people attending nine days of events.<sup>37</sup> However, International Day Against Homophobia celebrations that year were marked by violence when the owner of a Phnom Penh LGBTIQ bar was beaten outside his establishment and subject to homophobic slurs.<sup>38</sup>

Claire Van der Vaeren, UN Development Programme (UNDP) Representative and Resident Coordinator for Cambodia, noted that "the LGBT community in Cambodia is becoming more vocal and organised, as demonstrated by the Pride activities which grow every year."<sup>39</sup> Cambodia's first national LGBTIQ community dialogue also took place in early 2014 with support from the UN and other partners,<sup>40</sup> while the 2015 celebrations marked the launch of the Kingdom's first gay magazine "Q Cambodia."<sup>41</sup> Jean-Francois Cautain, former European Union (EU) Ambassador to Cambodia, qualified the success of the Pride celebrations, noting that whilst the Cambodian government had taken some initiative to support LGBT people, 100

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<sup>34</sup> Second UPR cycle: *National Report*, Cambodia, para. 94.

<sup>35</sup> Cambodian Center for Human Rights, "Coming Out in the Kingdom: Lesbian, Gay, Bisexual and Transgender People in Cambodia", December 2010, p. 24, available at [http://www.cchrcambodia.org/admin/media/report/report/english/2010-12-09%20COMING%20OUT%20IN%20THE%20KINGDOM%20LESBIAN.%20GAY,%20BISEXUAL%20AND%20TRANSGENDER%20PEOPLE%20IN%20CAMBODIA\\_EN%20.pdf](http://www.cchrcambodia.org/admin/media/report/report/english/2010-12-09%20COMING%20OUT%20IN%20THE%20KINGDOM%20LESBIAN.%20GAY,%20BISEXUAL%20AND%20TRANSGENDER%20PEOPLE%20IN%20CAMBODIA_EN%20.pdf) (last visited 17 July 2017).

<sup>36</sup> Rachel Briggs, "Coming Out in Phnom Penh", The Phnom Penh Post, 11 May 2010, available at <http://www.phnompenhpost.com/lifestyle/coming-out-phnom-penh> (last visited 17 July 2017).

<sup>37</sup> Kenneth Ingram, "Pride celebration a 'success'", The Phnom Penh Post, 17 May 2011, available at <http://www.phnompenhpost.com/national/pride-celebration-success> (last visited 17 July 2017).

<sup>38</sup> Thomas Miller, "Bar fight stirs fears of homophobia", The Phnom Penh Post, 18 May 2011, available at <http://www.phnompenhpost.com/national/bar-fight-stirs-fears-homophobia> (last visited 17 July 2017).

<sup>39</sup> Claire Van der Vaeren, "Pride 2015: Equality begins at home", The Phnom Penh Post, 18 May 2015, available at <http://www.phnompenhpost.com/analysis-and-op-ed/pride-2015-equality-begins-home> (last visited 17 July 2017).

<sup>40</sup> Claire Van der Vaeren, "Pride 2015: Equality begins at home", The Phnom Penh Post, 18 May 2015; United Nations Development Programme, "Being LGBT in Asia: Cambodia Country Report", 2014, p. 25, available at <https://www.usaid.gov/sites/default/files/documents/1861/rbap-hhd-2014-blia-cambodia-country-report.pdf> (last visited 17 July 2017).

<sup>41</sup> Kristi Eaton, "Cambodia's LGBT Community Finds Its Voice With Q Magazine", NBC News, 2 June 2015, available at <http://www.nbcnews.com/news/asian-america/first-magazine-geared-toward-gay-lesbian-transgender-community-launched-cambodia-n364631> (last visited 17 July 2017).

incidents of violence against LGBTIQ individuals were reported in Cambodia in the first four months of 2015.<sup>42</sup>

Cambodia's 2016<sup>43</sup> and 2017<sup>44</sup> Pride celebrations were conducted in Phnom Penh during May around the theme "I am what I am," with no reported disruptions. The 2017 celebrations included 12 days of activities and record attendance of over 300 people at a TukTuk Pride race.<sup>45</sup> Moreover, in December 2017, Cambodia is scheduled to host the International Lesbian and Gay Association (**ILGA**) ASIA conference for the first time, with over 300 LGBTIQ HRDs from all over Asia expected to attend.<sup>46</sup>

**Freedom of Expression:** Although Cambodia has experienced a general retreat in human rights freedoms, particularly pertaining to freedom of expression and human rights activism,<sup>47</sup> LGBTIQ HRDs indicated a sense of positivity in 2016. Srun Srorn of CamAsean Youth's Future (**CamASEAN**), a Cambodian CSO that addresses LGBTIQ rights among other topics, noted that he was "very positive about the attitude of the government to [LGBTIQ] issues."<sup>48</sup> LGBTIQ HRDs are not struggling to secure a media platform, as evidenced by the United States Agency for International Development (**USAID**)-sponsored 2016 media campaign "We Are the Same" that seeks to raise awareness of the struggles LGBTIQ Cambodians face.<sup>49</sup>

Nevertheless, as the International Center for Not-for-Profit Law (**ICNL**) notes, the government's release of the LANGO may impose burdensome and arbitrary restrictions on Cambodian civil society. Moreover, according to ICNL, this law could pose a threat to LGBTIQ HRDs should they criticise government action, or inaction due to the law's requirement for political neutrality for all associations.<sup>50</sup>

In 2015, the Ministry of Information issued a statement calling on members of the media to stop mocking the LGBT community. The statement commented that "this kind of commentary and/or performance is an act of looking down on LGBT people. It degrades the honor and

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<sup>42</sup> Marina Shafik, "Gay Pride Week Calls for Tolerance", Khmer Times, 19 May 2015, available at <http://www.khmertimeskh.com/news/11477/gay-pride-week-calls-for-tolerance/> (last visited 17 July 2017).

<sup>43</sup> "LGBT Pride Cambodia 2016 Calendar of Events", Gay Cambodia News, 2016, available at <http://www.gaycambodianews.com/lgbt-pride-cambodia/#one> (last visited 17 July 2017).

<sup>44</sup> Caterina Rossi, "What's on: Phnom Penh Pride 2017", The Phnom Penh Post, 16 May 2017, available at <http://www.phnompenhpost.com/lifestyle/whats-phnom-penh-pride-2017> (last visited 17 July 2017).

<sup>45</sup> Emily Smith, "Pride Tuk Tuk Race brings festival spirit to streets of Phnom Penh", Southeast Asia Globe, 26 May 2017, available at <http://sea-globe.com/pride-tuk-tuk-race> (last visited 9 October 2017).

<sup>46</sup> "ILGA Asia regional Conference 2017: registration is open!", ILGA Asia, 23 June 2017, available at <http://ilga.org/ilga-asia-regional-conference-2017-registration-is-open> (last visited 9 October 2017).

<sup>47</sup> "Cambodia: UN experts urge end to attacks against civil society, human rights defenders", UN News Centre, 12 May 2016, available at [http://www.un.org/apps/news/story.asp?NewsID=53915#.V1\\_TD5N94n1](http://www.un.org/apps/news/story.asp?NewsID=53915#.V1_TD5N94n1) (last visited 17 July 2017).

<sup>48</sup> Jamie Elliott, "Pro-LGBT orgs bullish on 2016", The Phnom Penh Post, 1 January 2016, available at <http://www.phnompenhpost.com/national/pro-lgbt-orgs-bullish-2016> (last visited 17 July 2017).

<sup>49</sup> Jonathan Cox, "Media Campaign Launched to Bring LGBT Issues Out of the Shadows", Khmer Times, 24 March 2016, available at <http://www.khmertimeskh.com/news/23196/media-campaign-launched-to-bring-lgbt-issues-out-of-the-shadows/> (last visited 17 July 2017).

<sup>50</sup> "NGO Law Monitor: Cambodia", The International Center for Not-for-Profit Law, 30 June 2017, available at <http://www.icnl.org/research/monitor/cambodia.html> (last visited 17 July 2017).

rights of LGBT people who are also protected by the State's law as well as other citizens."<sup>51</sup> The same year, after talks with LGBTIQ activists, Information Minister Khieu Kanharith indicated support for a LGBT roundtable on State television.<sup>52</sup>

## The Right to Equality and Non-Discrimination

**General Situation:** Cambodia does not criminalise consensual same-sex sexual activities, but does not offer positive legal protection for LGBTIQ people either. There are no prohibitions against discrimination on the basis of sexual orientation or gender identity, no sanctions for violating the rights of LGBTIQ individuals, and no legal recognition of same-sex partnerships.

The Royal family of Cambodia is supportive of the LGBTIQ community. In 2004, King Norodom Sihanouk made a statement in support of same-sex marriage,<sup>53</sup> and Princess Norodom Soma published an editorial in the Phnom Penh Post in 2012 entitled "Being Gay is Not Wrong."<sup>54</sup>

**Government Statements:** The government, however, has taken an ambivalent stance on LGBTIQ issues, often denying the existence of LGBTIQ discrimination. In effect, this stance has enabled the abuse of LGBTIQ people and their HRDs by public and private parties.

Police officials and the Ministry of the Interior have denied the existence of systematic discrimination against LGBTIQ people, maintaining that there is no problem and/or need for special protection.<sup>55</sup> In 2013, Chou Bun Eng, Secretary of State at the Ministry of Interior, remarked that "there are not LGBT rights violations in Cambodia, because our constitution already says that we must respect everyone's rights."<sup>56</sup> She emphasised that there was no need for further protections, holding human rights NGOs responsible for attempting to create a problem where none existed.<sup>57</sup>

In 2015, government spokesman Phay Siphon made several statements indicating that LGBTIQ-specific legal protections would be superfluous in Cambodia. In May 2015, when asked about the release of a report on discrimination against transgender Cambodians, he argued that even without legal protections, transgender Cambodians do not face discrimination: "We don't have a special law yet but we respect them the same as a regular

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<sup>51</sup> Tin Sokhavuth, "Ministry: Stop Mocking LGBT Community", Khmer Times, 15 December 2015, available at <http://www.khmertimeskh.com/news/18712/ministry--stop-mocking-lgbt-community/> (last visited 17 July 2017).

<sup>52</sup> Kuch Naren, "State TV to Air Talks on LGBT Issues: Activist", The Cambodia Daily, 26 May 2015, available at <https://www.cambodiadaily.com/archives/state-tv-to-air-talks-on-lgbt-issues-activist-84357/> (last visited 17 July 2017).

<sup>53</sup> "Cambodian king backs gay marriage", BBC, 20 February 2004, available at <http://news.bbc.co.uk/2/hi/asia-pacific/3505915.stm> (last visited 17 July 2017).

<sup>54</sup> Princess Norodom Soma, "Being gay is not wrong", The Phnom Penh Post, 16 November 2012, available at <http://www.phnompenhpost.com/columns/being-gay-not-wrong> (last visited 17 July 2017).

<sup>55</sup> "Being LGBT in Asia: Cambodia Country Report", UNDP, 2014, p. 31.

<sup>56</sup> Justine Drennan & Chlay Channyda, "Shift in LGBT policy urged", The Phnom Penh Post, 2 January 2013, available at <http://www.phnompenhpost.com/national/shift-lgbt-policy-urged> (last visited 17 July 2017).

<sup>57</sup> Justine Drennan & Chlay Channyda, "Shift in LGBT policy urged", The Phnom Penh Post, 2 January 2013; "Being LGBT in Asia: Cambodia Country Report", UNDP, 2014, p. 31.

person — same employment, same education, same everything.”<sup>58</sup> In September 2015, Phay Siphon responded to Nepal’s new constitutional protections for LGBT people by asserting that Cambodia had already gone further: “Cambodian society does not discriminate against LGBT people. It is only individuals who do so”, also stating that “no Cambodian laws discriminate against them, and nothing is banning them from loving each other or getting married.”<sup>59</sup>

There have also been supportive government voices. In 2012, five years after Prime Minister Hun Sen disclosed intentions to disinherit his adopted daughter because of her sexual orientation,<sup>60</sup> he urged Cambodians not to discriminate against lesbian and gay Cambodians, saying, there are gays and lesbians in every country, so there should be no discrimination against them just because of their destiny.”<sup>61</sup>

**Government Efforts to Increase LGBTIQ Equality:** The years 2014 and 2015 marked a turning point in terms of recognition of the LGBTIQ community. The Cambodian delegation at the 2014 Regional Conference on Gender Equality and Women’s Empowerment raised the issue of LGBTIQ rights,<sup>62</sup> and the Cambodian delegation to the 47th session of the Commission on Population and Development spoke in favour of recognising freedom from discrimination based on sexual orientation as a basic human right.<sup>63</sup> The Ministry of Women’s Affairs’ five-year strategic plan notes that bisexual women and trans persons are among the most vulnerable groups in society, facing a higher risk of discrimination, stigma and gender-based violence (**GBV**).<sup>64</sup>

The Ministry of Education also partnered with NGOs to conduct sensitivity training for teachers in order to combat bullying of LGBTIQ youth.<sup>65</sup> Moreover, the Ministry, in 2017, is developing a new Life Skills curriculum for grades 1-12 that will offer instruction on LGBTIQ issues, sex and GBV. The proposed curriculum will teach safe sex, non-discrimination and self-determination

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<sup>58</sup> Rebecca Moss, “CCHR calls for transgender rights”, The Phnom Penh Post, 1 April 2015, available at <http://www.phnompenhpost.com/national/cchr-calls-transgender-rights> (last visited 17 July 2017).

<sup>59</sup> Chea Takihiro, “Cambodia Welcomes Same-Sex Marriage Gov’t Spokesman Says”, Khmer Times, 24 September 2015, available at <http://www.khmertimeskh.com/news/16143/cambodia-welcomes-same-sex-marriage--gov---t-spokesman-says/> (last visited 17 July 2017).

<sup>60</sup> “Cambodia PM slammed for disowning lesbian daughter”, Reuters, 31 October 2007, available at <http://uk.reuters.com/article/life-cambodia-lesbian-dc-idUKBKK11415620071031> (last visited 17 July 2017).

<sup>61</sup> “Cambodia’s PM speaks out against anti-gay bias”, Asian Correspondent, 12 December 2012, available at <https://asiancorrespondent.com/2012/12/cambodias-pm-speaks-out-against-anti-gay-bias/> (last visited 17 July 2017).

<sup>62</sup> Claire Van der Vaeren, “Pride 2015: Equality begins at home”, The Phnom Penh Post, 18 May 2015.

<sup>63</sup> Claire Van der Vaeren, “Pride 2015: Equality begins at home”, The Phnom Penh Post, 18 May 2015.

<sup>64</sup> “Cambodian Gender Strategic Plan - Neary Rattanak 4”, Ministry of Women’s Affairs, December 2014, p. 11, available at [https://issuu.com/undpcambodia/docs/cambodian\\_gender\\_strategic\\_plan\\_-\\_n](https://issuu.com/undpcambodia/docs/cambodian_gender_strategic_plan_-_n) (last visited 17 July 2017).

<sup>65</sup> Igor Kossov & Morn Vannetey, “LGBT bullying endemic, report finds”, The Phnom Penh Post, 18 December 2015, available at <http://www.phnompenhpost.com/national/lgbt-bullying-endemic-report-finds> (last visited 17 July 2017).

for marriage. At the time of publication, the government hoped to have a textbook and curriculum developed and properly vetted for the 2018-2019 school year.<sup>66</sup>

**Legal Status:** Despite local initiatives and declarations, both the Civil Code and the Constitution remain legal obstacles to same-sex marriage in Cambodia. Numerous other Cambodian laws, including the anti-kidnapping law, anti-trafficking laws, and the Commune Safety Policy, are also used to target LGBTIQ community members.<sup>67</sup> In one case, a family bribed officials to change their daughter's age on documents in order to take legal action against her female partner, charging her with rape and kidnapping.<sup>68</sup>

In addition, LGBTIQ individuals report being targeted and exploited by the police, specifically being subject to harassment, beatings and gang rape.<sup>69</sup> One transgender HRD asserted that harassment "happens every day" with the community being "discriminated against and stigmatised by authorities."<sup>70</sup> Sou Sotheavy, the transgender director of the CSO Network Men Women Development noted: "When they see us walking in the street they laugh at us, and call us bad words [...] and fight us. And they look at us as if we are strange people."<sup>71</sup>

**Efforts to Promote Law Reform:** In 2017, a consortium of UN agencies including the UN Entity for Gender Equality and the Empowerment of Women (**UN Women**), the Joint UN Programme on HIV/AIDS (**UNAIDS**), UNDP, UN Population Fund (**UNFPA**) and OHCHR launched a project aiming to reinforce ties between Cambodian CSOs working on LGBTIQ issues and the Cambodian government. It is hoped that this will lead to law reforms increasing protection of LGBTIQ rights. The same consortium will also be working on Cambodia's upcoming report to the United Nations Committee on the Elimination of Discrimination against Women (**CEDAWC**), recognising that SOGIESC rights are gender issues.

## Conclusion

Due to Cambodia's non-interference in public pride demonstrations, and willingness of certain officials to work with LGBTIQ HRDs and civil society, Cambodia has seen greater freedom of expression, association, assembly, and participation in cultural life by the LGBTIQ community and LGBTIQ HRDs. Most notably, the Cambodian government has removed an outright ban on same-sex marriage, conducted LGBTIQ sensitivity training among public school teachers, and

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<sup>66</sup> Leonie Kijewski & Kong Meta, "Life Skills' course in the works", The Phnom Penh Post, 13 June 2017, available at <http://www.phnompenhpost.com/national/life-skills-course-works-1> (last visited 17 July 2017).

<sup>67</sup> "Being LGBT in Asia: Cambodia Country Report", UNDP, 2014, p. 36.

<sup>68</sup> Bennett Murray & Khouth Sophak Chakrya, "Pride week brings together Kingdom's community", The Phnom Penh Post, 10 May 2013, available at <http://www.phnompenhpost.com/7days/pride-week-brings-together-kingdom%E2%80%99s-community> (last visited 17 July 2017).

<sup>69</sup> Laignee Barron, "Groups insist on equal rights", The Phnom Penh Post, 11 December 2013, available at <http://www.phnompenhpost.com/national/groups-insist-equal-rights> (last visited 17 July 2017).

<sup>70</sup> Laignee Barron, "Groups insist on equal rights", The Phnom Penh Post, 11 December 2013.

<sup>71</sup> Laignee Barron, "Groups insist on equal rights", The Phnom Penh Post, 11 December 2013.

is developing an official curriculum on LGBTIQ issues and non-discrimination, among other things.

Since its two UPR cycles, however, Cambodia has accepted just some of the recommendations it received which impact HRDs and the civil society. Many government officials continue to maintain the position that further legal protection of the LGBTIQ community is unnecessary, subsequently not recognising the potential presence of systematic discrimination towards the LGBTIQ community. As a result, LGBTIQ HRDs still face some obstacles related to freedom of expression, association and assembly as well as discrimination at times.

Moreover, since mid-2017, Cambodia appears to have entered a phase of greater political uncertainty in which fundamental freedoms and the freedom of civil society and independent media appear to be under increased threat. Under such circumstances, Cambodia's HRDs and vulnerable communities, such as LGBTIQ people, remain at risk.

## **Recommendations**

In the lead-up to the third UPR review of Cambodia in January/February 2019:

- CSOs should actively engage in monitoring the implementation of those recommendations Cambodia accepted and/or noted during the first two UPR cycles so as to gather relevant data on the improvement of the human rights situation in the country and to report at the third UPR cycle.
- CSOs should document violations and abuses endured by LGBTIQ people and their defenders so as to provide recommending states and the relevant UN mechanisms with solid evidence-based information.
- CSOs and recommending States should work collaboratively to develop UPR recommendations for the third cycle that emphasise the benefit to Cambodia of and strengthening the protection of the LGBTIQ community, its defenders, and fundamental freedoms more generally.

## Cambodia: LGBTIQ HRD Interview

Human Rights of LGBTIQ  
Communities and HRDs:  
Frontline Voices



**Srun Sorn,  
Co-Founder,  
CamASEAN Youth's Future  
(CamASEAN)**

**How did you become involved in lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ) rights work?**

In 2002, I was doing vaccinations for babies and their mothers. One day, I found a woman who had been beaten by her husband, who had her clothes torn apart, and whose baby was sick. When I visited her for the vaccination's second injection, she told me about her forced marriage and rape by her husband to have this baby. At that time, I had a lot of patients and I needed to do my job, but I took the time to talk with her. She told

me she was a woman who loves other women and that her husband found out only after marrying her. That is why her husband was beating her; because she talked to another woman. When I asked her why she got married in the first place, she replied that her parents had forced her. This is when I started focusing on women who love women in Cambodia.

I first worked with a lesbian group in Kampong Chhnang and then with transmen. I worked with MSM [men who have sex with men] NGO [non-governmental organisation] to promote gay man rights in my work only from 2007 when I started to support the HIV [Human Immunodeficiency Virus] program. However, the organisation did not want to be included in the same group as the lesbians because they felt they did not had HIV. For me, they are part of the same group as they face the same issues: non-acceptance by the family, discrimination from the neighbours, and a lack of protection from the society. My boss disagreed with me. So, I waited to meet the right people and sometime later, other several activists and I founded Rainbow Community Kampuchea (**RoCK**), which I left after the RoCK registered in 2013 as an NGO. I founded another movement, CamASEAN Youth's Future (**CamASEAN**), which has a more inclusive approach of building allies of LGBTIQ and other marginalised people.

### **Do you consider yourself a human rights defender (HRD)?**

I have never identified myself as a human right defender (**HRD**); probably because it comes from the definition of what is a human right defender. I am more of a human rights protector. The words in Khmer and in English are a bit different. For me, we were born with rights and we don't have to beg to someone to defend it, we just protect our rights. So, as long as there are human being violations I will be there.

### **What have been the biggest challenges you have faced in advocating for LGBTIQ rights?**

One is about changing the mindset of people. Every one of us is educated and being taught by our parents, eldest sisters, teachers, bosses. We are being told to respect others, to defend ourselves, to be free, to be equal and fair with each other. But none of us is telling us to be our true selves. We are trained to be like them.

Another challenge is to be considered equal. Even when you walk in a meeting room in a Ministry or when you communicate with an Excellency, you don't meet because you put a lot of flower in your letter, SMS [short messaging service] is enough, we are human beings. And this is true, this is how we met with the Ministry of Information. This has allowed us to have a good relationship with him. We have the same relationship with the Ministry of Women and Ministry of Education, Youth and Sports who we are working with on a e-learning program on SOGIE [sexual orientation, gender identity,

gender expression] for all the teachers that will integrate the national curriculum in 2018.

Finally, another challenge is to make sure LGBTs do not feel isolated. So, in our work we have adopted a strategy of cross-cutting issue, cross-sectoring, and cross-grouping. The way we are helping them is not only about helping them but about allowing them to be who they are. That's why we also work with an inter belief group of Muslims, Christians, and Buddhists which brings people together despite their religious beliefs.

### **How would/did you overcome these challenges?**

We need people to learn more about LGBTIQ rights; we need the people to stand for their rights, not others or other organisations do that. In this sense, we need to support more the events that are organised at the community level, we need more capacity building activities, such as training, and we need to build stronger networks so as to build more solidarity. Educational platforms would also be helpful.

### **Have you ever felt personally at risk because of your work?**

I have received hate messages and comments on Facebook from a woman who attacked me in any posts that she made. She was trying to stop me from promoting LGBT rights saying that I was the devil who was born in this country only to create more LGBTs. Other people posted about how killing all LGBTs will help developing our country. Even on social media, we can be at risk. Another risk can arise when working



with the police or the commune council because they are not allowing us to discuss human rights as it is perceived as a political topic. They allow us to meet only if we request to address other topics such as gender, HIV, or health.

**What have been the most successful strategies or techniques you've used to create positive change?**

We mostly use social media. We have more than 20 Facebook pages and groups, one of which has around 50,000 members. We organise online discussions every Saturday and Sunday for one hour.<sup>1</sup> We focus on positive ideas such as how to be a good child, a good parent, a citizen. It is about telling positive stories that will inspire others. The groups can also be supportive for young people struggling or who want to kill themselves. They post their stories and other members of the group will help where relatives and friends cannot. Those stories and cases are also useful to gather evidence to lobby the national assembly to take action to protect LGBT people.

**How do you think society has changed concerning LGBTIQ rights in Cambodia over the past 5-10 years?**

I think there have been two types of change. The first one is the LGBT community which became more brave, more open, and whose members are more confident in coming out from anywhere in the country. The second one is the government. Even if there are still a lot of problems, the government is more

open, for example representatives of six ministries attended the national dialogue<sup>2</sup> last year. They are also taking small actions like the non-discrimination memorandum written by the Ministry of Information or the inclusion of an HIV program by the Ministry of Women.

However, we need more support from the Ministry of Justice who really want to support us but they need evidence. In this sense, we are currently documenting through pictures how local authorities support LGBTIQ communities. We will then show this material to the government to raise more awareness and advocate for more support for LGBTIQ communities at the national level. In particular, I am thinking about: 1) More LGBTIQ sensitisation in schools; 2) More inclusive policies (for the time being, an antidiscrimination law would take more time to be implemented); 3) More inclusive social protection mechanisms, such as the extension of the so-called poverty card to non-traditional households.

**Do you think the Universal Periodic Review (UPR) recommendations have an impact on Cambodia?**

We participated in 2013 and 2014, but it had no impact. Last year, we communicated with UPR Info, we want to do something before 2018. We have the idea to include SOGIE and LGBTs in every report. Of course, we would write a thematic report on LGBT but we would also like to include a line or two in other reports addressing other issues such as children, women, etc. This is important

<sup>1</sup> "ផ្លូវចិត្តរបស់ខ្ញុំ My Voice My Story", Facebook Page, available at <https://www.facebook.com/MyVoiceMyStory/?ref=bookmarks> (last visited 4 July 2017).

<sup>2</sup> The National Dialogue is a yearly meeting created in 2014 discussing LGBTIQ issues in Cambodia.

because we have some members who are 14 years old, and they know who they are, and who they are falling in love with.

**Does civil society know how to use the UPR recommendations and comments for advocacy in Cambodia?**

I would say that some good organisations know how to use the recommendations made to the government but I don't know how many percent, less than 50% for sure. In 2014, the government received 92 recommendations. I was in the meeting and they said that they signed all the recommendations but nobody knew how many recommendations the government will implement. Some NGOs offered assistance but the government replied that they had their own resources and capacity to do this.

**What gives you hope when looking to the future of LGBTIQ rights in Cambodia?**

I think, probably like everyone else, that my dream is that no one talks about LGBT anymore, that no one ask them: "Why are you gay?", "Why are you lesbian?", "Why are you transgender?" It is like everyone do not ask: "Why are you a man?" or "Why are you a woman?" Before no one talked about LGBT because of hate, discrimination, and criminalisation of the LGBT people. Now people start talking. So this is my own dream, to change the system, so LGBT are so accepted that people do not need to talk about it anymore, and that no one ask LGBTs why they are LGBT.



# Indonesia: Country Profile

## Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

### Introduction

#### UPR Cycles

**First UPR Cycle:** 9 April 2008

**Second UPR Cycle:** 23 May 2012

**Third UPR Cycle:** 3 May 2017

**Fourth UPR Cycle:** ~2021-2022

The Republic of Indonesia (**Indonesia**) is the first State in Southeast Asia to have undergone the third Universal Periodic Review (**UPR**) cycle, in May 2017. Issues related to Indonesia's lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) community and human rights defenders (**HRDs**) have been raised during all three of its UPR cycles.

Throughout them, Indonesia has shown an increased willingness to accept recommendations to enhance its system of protection and promotion for human rights as they relate to HRDs. As for its LGBTIQ community, while Indonesia committed during its second UPR to review its laws to prevent discrimination and guarantee respect for the rights of minorities, at the same time, it chose not to support recommendations to decriminalise same-sex sexual relations on the basis that these laws existed under separate *sharia* jurisdictions in certain provinces.

This Country Profile details how although Indonesia's LGBTIQ community and HRDs operate visibly, they remain vulnerable and subject to ill-treatment on a wide range of fronts, with conditions even worsening in certain respects. Among other things, in 2017, two gay men were flogged under Aceh province's *sharia* law for having sex. The LGBTIQ community and its HRDs' ability to assemble and participate in the cultural life of the community has been restricted, particularly since 2016, with the police frequently playing an active role.

Following Indonesia's third UPR and in the lead-up to its fourth UPR in 2021 or 2022, recommending States and civil society organisations (**CSOs**) have an opportunity to work with Indonesia on implementing recommendations Indonesia has accepted, and working to develop enhanced UPR recommendations

"We have so many regulations that protect us as citizens of Indonesia, and we also have hope because we are surrounded by people who really understand human rights, especially LGBT rights. ... [W]e believe that [through] our connection with people outside Indonesia, the international community, as a member of the United Nations, that the changes will come".

**Yuli Rustinawati,  
Founder and Chairman, Arus Pelangi**

that provide enhanced protection for the LGBTIQ community and HRDs and focus on the universality and benefit to Indonesia of various proposed reforms.

## Past UPR Cycles for Indonesia

### First UPR Cycle (9 April 2008)

**National Report Filed:**<sup>1</sup> Indonesia's national report for the first UPR was published on 11 March 2008. In it, Indonesia asserted that it was implementing actions also to promote the participation of female HRDs in politics and public policy in the field of human rights.<sup>2</sup> However, the report did not mention LGBTIQ HRDs or the LGBTIQ community.

**Stakeholders' Submissions Made:**<sup>3</sup> The summary of the 17 stakeholders' submissions was published on 6 March 2008. Stakeholders expressed concern over issues affecting the LGBTIQ community, including the treatment of individuals who express their gender in ways that deviate from cultural norms.<sup>4</sup> In particular, stakeholders noted that *waria* (male to female transgender people) and those in same-sex relations frequently faced police harassment.<sup>5</sup> Stakeholders further expressed concern over *waria* being classified as mentally handicapped due to a federal law that denies *waria* the right to work or reduces their work to low-paid jobs.<sup>6</sup>

Stakeholders also explicitly addressed issues facing HRDs in Indonesia. They noted that at least 15 HRDs had been killed since 2000, with death threats and intimidation directed towards HRDs being traced back to police, military, and intelligence officers. In addition, stakeholders reported that Indonesia's National Commission on Human Rights had been subject to continued surveillance, death threats, and intimidation.<sup>7</sup>

#### First UPR Cycle for Indonesia: Recommendations Received

In its first UPR, held in April 2008, Indonesia received the following recommendations which directly relate to the LGBTIQ community and LGBTIQ HRDs:

- Indonesia is commended for enabling a vibrant civil society, including with respect to those engaged in defending human rights, and is encouraged to

<sup>1</sup> *National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1: Indonesia*, U.N. Doc. A/HRC/WG.6/1/IDN/1, 11 March 2008, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/115/30/PDF/G0811530.pdf?OpenElement> (last visited 4 July 2017).

<sup>2</sup> First UPR cycle: *National Report*, Indonesia, para. 43.

<sup>3</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1: Indonesia*, U.N. Doc. A/HRC/WG.6/1/IDN/3, 6 March 2008, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/113/95/PDF/G0811395.pdf?OpenElement> (last visited 4 July 2017).

<sup>4</sup> First UPR cycle: *Stakeholders' Summary*, Indonesia, para. 10.

<sup>5</sup> First UPR cycle: *Stakeholders' Summary*, Indonesia, para. 10.

<sup>6</sup> First UPR cycle: *Stakeholders' Summary*, Indonesia, para. 10.

<sup>7</sup> First UPR cycle: *Stakeholders' Summary*, Indonesia, para. 8.

support and protect their work, including at the provincial and local level as well as in regions with special autonomy (Recc. 77.3; no State attributed).

- The death penalty continues to be applied in Indonesia, and recommend to the Government that it be abolished (United Kingdom).

**Source:** *Report of the Working Group on the Universal Periodic Review: Indonesia*, U.N. Doc. A/HRC/8/23, 14 May 2008, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/134/21/PDF/G0813421.pdf?OpenElement> (last visited 4 July 2017).

**Comments Received; Response to Recommendations:** Indonesia received specific comments from delegations during the UPR Interactive Dialogue concerning the need to increase awareness of the role of HRDs and the responsibility of security forces to protect them,<sup>8</sup> as well as violations suffered by HRDs.<sup>9</sup> Indonesia responded by acknowledging that “that there is a need to provide additional human rights training for military and law enforcement officials, including the police and local judges”,<sup>10</sup> and a specific “need for a continued reform process of the judiciary, including enhancing the capacity of its human resources”<sup>11</sup> about human rights abuses.

Concerning the death penalty, Indonesia maintained that its legality was a democratic choice,<sup>12</sup> and was “applied in a very selective and limited manner and only for very serious crimes.”<sup>13</sup> Indonesia also declared it was considering an amendment in its Penal Code criminalising torture as defined in the Convention against Torture (**CAT**).<sup>14</sup>

## Second UPR Cycle (23 May 2012)

**National Report Filed:**<sup>15</sup> Indonesia's national report for the second UPR was published on 7 March 2012. It did not explicitly address the LGBTIQ community or HRDs. It noted, however, that Indonesia regularly conducted human rights education and training programs,<sup>16</sup> specifically for police and military officers.<sup>17</sup> It added that Indonesia protected and supported civil society, acknowledging the “check and balance” that CSOs and critical media represent.<sup>18</sup>

<sup>8</sup> First UPR cycle: *Report of the Working Group*, Indonesia, para. 46.

<sup>9</sup> First UPR cycle: *Report of the Working Group*, Indonesia, para. 50.

<sup>10</sup> *Report of the Human Rights Council on its eighth session*, U.N. Doc A/HRC/8/52, 1 September 2008, para. 349.

<sup>11</sup> *Report of the Human Rights Council on its eighth session*, U.N. Doc A/HRC/8/52, 1 September 2008, para. 352.

<sup>12</sup> First UPR cycle: *Report of the Working Group*, Indonesia, paras. 51, 78.

<sup>13</sup> *Report of the Human Rights Council on its eighth session*, U.N. Doc A/HRC/8/52, 1 September 2008, paras. 344-345.

<sup>14</sup> *Report of the Human Rights Council on its eighth session*, U.N. Doc A/HRC/8/52, 1 September 2008, para. 355.

<sup>15</sup> *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Indonesia*, U.N. Doc. A/HRC/WG.6/13/IDN/1, 7 March 2012, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/116/38/PDF/G1211638.pdf?OpenElement> (last visited 4 July 2017).

<sup>16</sup> Second UPR cycle: *National Report*, Indonesia, paras. 12-15.

<sup>17</sup> Second UPR cycle: *National Report*, Indonesia, paras. 16-18.

<sup>18</sup> Second UPR cycle: *National Report*, Indonesia, paras. 24-25.

**Stakeholders Submissions Made:**<sup>19</sup> The summary of the 32 stakeholders' submissions was published on 9 March 2012. Stakeholders expressed concern over the lack of express laws protecting HRDs.<sup>20</sup> They recommended the establishment of a protection unit for HRDs under the National Commission on Human Rights.<sup>21</sup> Stakeholders also noted the increase in threats against LGBTIQ HRDs, which were generally attributed to the rise of intolerance and strengthening of conservative Islamic groups, and to statements from the national police chief according to which he would work closely with such groups to uphold national morals and prevent moral decline.<sup>22</sup>

### **Second UPR Cycle for Indonesia: Recommendations Received**

In its second UPR, held in May 2012, Indonesia received a number of specific recommendations in connection with the themes of human rights education and of ensuring the protection of HRDs:

- Eliminate legislation which criminalises same-sex sexual relations, as well as all legislation that discriminates on the basis of sexual orientation (Spain).
- Abolish the death penalty (Austria, Brazil, Spain).
- Criminalise torture in its Penal Code (Spain, United States of America) and ratify OP-CAT (France, New Zealand);
- Review laws and decrees currently in force restricting the freedoms of religion, opinion and of expression, in order to prevent any risk of discrimination (Switzerland).
- Ensure a safe and enabling environment for all HRDs (Norway), continue efforts to fully guarantee the protection and independence of HRDs (Greece), and to improve human rights (Republic of Korea).
- Conduct impartial and independent investigations into acts of violence committed against HRDs to bring those responsible to justice and fully guarantee freedom of expression (France).
- Adopt legislation for the legal recognition and protection of HRDs, and repeal legislation that restricts the right to defend and promote human rights (Spain).
- Further promote human rights education and training at all educational levels in partnership with all relevant stakeholders to promote and protect the rights of every person (Pakistan, Sri Lanka, Thailand, Islamic Republic of Iran, Myanmar,

<sup>19</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Indonesia*, U.N. Doc. A/HRC/WG.6/13/IDN/3, 9 March 2012, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/118/12/PDF/G1211812.pdf?OpenElement> (last visited 4 July 2017).

<sup>20</sup> Second UPR cycle: *Stakeholders' Summary*, Indonesia, para. 47.

<sup>21</sup> Second UPR cycle: *Stakeholders' Summary*, Indonesia, para. 15.

<sup>22</sup> Second UPR cycle: *Stakeholders' Summary*, Indonesia, para. 48.

Iraq, Bolivarian Republic of Venezuela, Nepal) and implement regular reviews to ensure effectiveness (New Zealand).

- Continue to disseminate international human rights instruments and national legislation to law enforcement officers to continue increasing awareness of their role in protecting people's rights, particularly those of vulnerable and marginalised groups (Bolivarian Republic of Venezuela).
- Continue its educational and awareness raising work to promote human rights, train law enforcement officials and judges in human rights issues; improve the penal code and reform the judicial system (Russian Federation).
- Ensure prompt, comprehensive, and effective investigations into credible allegations of human rights violations by members of the security forces, and examine options for establishing an independent review mechanism with the ability to recommend prosecutions (Australia) and take measures to guarantee accountability for such crimes (Canada).
- Guarantee the rights of persons belonging to minorities (France).

**Source:** *Report of the Working Group on the Universal Periodic Review: Indonesia*, U.N. Doc. A/HRC/21/7, 5 July 2012, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/150/17/PDF/G1215017.pdf?OpenElement> (last visited 5 July 2017).

**Comments Received; Response to Recommendations:** During the UPR Interactive Dialogue, Indonesia indicated that recommendations concerning the death penalty and the decriminalisation of same-sex sexual relations did not enjoy its support. Indonesia explained that these recommendations “do not reflect the actual situation in the Provinces they refer to”,<sup>23</sup> namely Aceh and Papua, which apply the Sharia Penal Code. However, Indonesia accepted the recommendations about the criminalisation of torture and the ratification of the Optional Protocol to the CAT.<sup>24</sup>

Indonesia also received specific comments from Switzerland and France concerning discrimination against people of diverse sexual orientation and gender identity.<sup>25</sup> In response, Indonesia committed to review its laws and decrees restricting various freedoms in order to prevent any risk of discrimination and guarantee the full respect of the rights of persons belonging to minorities.<sup>26</sup>

<sup>23</sup> *Report of the Working Group on the Universal Periodic Review: Indonesia, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/21/7/Add.1, 5 September 2012, paras. 6.5-6.6, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/164/23/PDF/G1216423.pdf?OpenElement> (last visited 4 July 2017).

<sup>24</sup> Second UPR cycle: *Report of the Working Group, Indonesia*, paras. 108.26-108.29.

<sup>25</sup> Second UPR cycle: *Report of the Working Group, Indonesia*, para. 36.

<sup>26</sup> Second UPR cycle: *Report of the Working Group, Indonesia*, para. 108.103.



Comments were also made about acts of violence against HRDs by police.<sup>27</sup> Indonesia accepted all recommendations demanding enhanced protection and independence for HRDs and prosecution for the acts of violence perpetrated against them.<sup>28</sup> However, it did not support Spain's recommendation concerning the legal recognition and protection of HRDs and the repeal of legislation restricting the right to defend and promote human rights.<sup>29</sup> Instead, it explained that "[t]he current national laws and regulations as well as the general climate of openness which is supported by press freedom sufficiently provide such protection."<sup>30</sup>

Finally, Indonesia accepted recommendations aiming at protecting freedoms of expression,<sup>31</sup> and promoting human rights education, including for all military and police personnel.<sup>32</sup>

### Third UPR Cycle (3 May 2017)

**National Report Filed:**<sup>33</sup> Indonesia's national report for the third UPR was published on 20 February 2017. It did not explicitly mention the LGBTIQ community. On HRDs, Indonesia stated that it "continuously promotes dialogue and raises awareness [...] at all levels, to end stereotyping and stigma towards the nature of HRD's works."<sup>34</sup> It added that "Indonesia commits to serve justice for victims and survivors and put the perpetrators accountable."<sup>35</sup>

Concerning freedoms of opinion and expression, and peaceful assembly, Indonesia recalled that those freedoms are already protected<sup>36</sup> — with limitations — in its Constitution<sup>36</sup>, and that Jakarta's local police had facilitated 3,145 public demonstrations in 2016.<sup>37</sup> Indonesia also recalled that it had adopted a revised law which aimed to ensure "that the press maintains their special qualities of objectivity, truth, fairness, respect of justice and human dignity of all individuals, without any discrimination."<sup>38</sup> In addition, it reported that it "has regularly conducted training and dissemination programs on obligation and commitments on human rights"<sup>39</sup> and promoted discussions "with different CSOs on various human rights issues, in order to enhance mutual understanding on the Government's substantive positions and policies on contemporary human rights topics."<sup>40</sup>

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<sup>27</sup> Second UPR cycle: *Report of the Working Group*, Indonesia, para. 72.

<sup>28</sup> Second UPR cycle: *Report of the Working Group*, Indonesia, paras. 108.15-108.119.

<sup>29</sup> Second UPR cycle: *Report of the Working Group*, Indonesia, para. 109.34.

<sup>30</sup> Second UPR cycle: *Report of the Working Group, Addendum*, Indonesia, para. 6.13.

<sup>31</sup> Second UPR cycle: *Report of the Working Group*, Indonesia, para. 108.103.

<sup>32</sup> Second UPR cycle: *Report of the Working Group*, Indonesia, paras. 108.36-108.44, 108.18, 108.85, 108.90-108.91.

<sup>33</sup> *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Indonesia*, U.N. Doc. A/HRC/WG.6/27/IDN/1, 20 February 2017, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/036/93/PDF/G1703693.pdf?OpenElement> (last visited 4 July 2017).

<sup>34</sup> Third UPR cycle: *National Report*, Indonesia, para. 142.

<sup>35</sup> Third UPR cycle: *National Report*, Indonesia, para. 141.

<sup>36</sup> Third UPR cycle: *National Report*, Indonesia, paras. 144-154.

<sup>37</sup> Third UPR cycle: *National Report*, Indonesia, para. 146.

<sup>38</sup> Third UPR cycle: *National Report*, Indonesia, para. 150.

<sup>39</sup> Third UPR cycle: *National Report*, Indonesia, para. 17.

<sup>40</sup> Third UPR cycle: *National Report*, Indonesia, para. 32.

**Stakeholders Submissions Made:**<sup>41</sup> The summary of the 51 stakeholders' submissions was published on 20 February 2017. Stakeholders expressed concern over an increase in public anti-LGBTIQ campaigns in Indonesia,<sup>42</sup> including "[a]nti-LGBT statements by government officials [that] created an environment of social sanction for harassment and violence against LGBT Indonesians that even led to death threats by militant Islamists."<sup>43</sup>

Stakeholders further noted that "HRDs were under attack in various forms, including murder."<sup>44</sup> They noted that the death penalty is still applied and torture is not yet defined as per the CAT.<sup>45</sup> Finally, they noted that the Anti-Terrorism Law and the Law No. 8 (2008) on Electronic Information and Transactions had been used differently from their original purposes, i.e., "to criminalize individuals exercising their right to freedom of opinion and expression" and in addition, "that there was no freedom of expression in West Papua."<sup>46</sup>

### **Third UPR Cycle for Indonesia: Recommendations Received**

In its third UPR, held in May 2017, Indonesia received various recommendations about the LGBTIQ community and the protection of HRDs:

- Repeal or revise legislation which criminalises sexual relations among consenting adults of the same sex, as well as legislation which discriminates on the basis of sexual orientation or gender identity (Iceland).
- Abolish the death penalty and establish a moratorium on executions (among others, Romania, Portugal, Spain, Chile, Australia, Belgium, Austria, Italy, Sweden, Norway, France, Argentina, Iceland, Germany, Ireland).
- Consider the ratification of the Optional Protocol to the CAT (Georgia, Kazakhstan, Mozambique, Denmark, Guatemala, Hungary, Montenegro, Portugal, Turkey, Canada, Honduras, Republic of Korea, Czechia, France).
- Take further steps to ensure a safe and enabling environment for all HRDs, including those representing the LGBT community and *adat* communities (Norway).
- Adopt legislative measures to prevent and combat intimidation, repression or violence against HRDs, journalists and civil society organisations (Mexico).
- Guarantee the rights of minority groups, particularly those of religious minorities and LGBT persons, through effective legal action against incitement to hatred

<sup>41</sup> Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Indonesia, U.N. Doc. A/HRC/WG.6/27/IDN/3, 20 February 2017, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/036/10/PDF/G1703610.pdf?OpenElement> (last visited 4 July 2017).

<sup>42</sup> Third UPR cycle: *Stakeholders' Summary*, Indonesia, paras. 6, 17, 30.

<sup>43</sup> Third UPR cycle: *Stakeholders' Summary*, Indonesia, para. 29.

<sup>44</sup> Third UPR cycle: *Stakeholders' Summary*, Indonesia, paras. 6, 27, 34, 99.

<sup>45</sup> Third UPR cycle: *Stakeholders' Summary*, Indonesia, paras. 4, 24, 26, 90.

<sup>46</sup> Third UPR cycle: *Stakeholders' Summary*, Indonesia, paras. 22, 48, 49, 91.

and violent acts, as well as by revising legislation that can have discriminatory effects (Brazil).

- Protect the HRDs (Iraq) and facilitate the work of HRDs and journalists (France, Ecuador).
- Prevent discrimination on any grounds including sexual orientation and gender identity (Australia).
- Prioritise progress on equality and non-discrimination, including in relation to LGBT persons (Ireland).
- Put in place a national policy to ensure the rights of LGTBI persons, and to punish cases of discrimination and those guilty of discrimination (Spain, Czechia).
- Ensure that national and regional laws and policies do not discriminate against any individuals in society, including LGBTI persons, and are in line with its international obligations (Sweden).
- Put an end to violence and discrimination in law and in practice against women, violence and discrimination against homosexuals (France).
- Intensify all efforts to respect and uphold freedom of expression, assembly, and religion and belief (Yemen, New Zealand, Mexico), end prosecutions under articles 106 and 110 of the Criminal Code for exercising freedom of expression and peaceful assembly (United States of America).
- Thoroughly and transparently investigate past human rights abuses (United States of America, Australia).

**Source:** *Report of the Working Group on the Universal Periodic Review: Indonesia*, U.N. Doc. A/HRC/36/7, 14 July 2017, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/192/60/PDF/G1719260.pdf?OpenElement> (last visited 18 October 2017).

**Comments Received; Response to Recommendations:** During the UPR Interactive Dialogue, various countries expressed their concerns about the “deterioration of the rights of LGBT persons”<sup>47</sup> and noted that Indonesia should “ensure the protection of human rights for all citizens, homosexual and heterosexual alike.”<sup>48</sup>

Indonesia responded at the 36th Session of the Human Rights Council<sup>49</sup> (**HRC**) concerning the rights of the LGBTIQ community. While non-governmental organisations (**NGOs**) had previously highlighted “the deterioration of the rights of LGBT persons’ who were subjected to vigilante attacks, police raids and violent, extra-judicial punishment”<sup>50</sup> and the necessity “to

<sup>47</sup> Third UPR cycle: *Report of the Working Group*, Indonesia, paras. 40, 50.

<sup>48</sup> Third UPR cycle: *Report of the Working Group*, Indonesia, para. 104.

<sup>49</sup> Draft *Report of the Human Rights Council on its thirty-sixth session*, U.N. Doc. Future A/HRC/36/2, 29 September 2017, para. 349.

<sup>50</sup> Draft *Report of the Human Rights Council on its thirty-sixth session*, U.N. Doc. Future A/HRC/36/2, 29 September 2017, para. 372.

show commitment to address discrimination against LGBTI",<sup>51</sup> Indonesia noted without accepting<sup>52</sup> the recommendations about the LGBTIQ community.<sup>53</sup> It explained that those recommendations were not "in line with Indonesia's priorities in its human rights agenda, in particular [...] LGBT issue being continuously controversial and polarising."<sup>54</sup> However, Indonesia supported Ireland's recommendation to prioritise "progress on equality and non-discrimination, including in relation to LGBT persons."<sup>55</sup>

Indonesia accepted recommendations concerning the implementation of the CAT<sup>56</sup> and supported recommendations on concrete actions to put in place when police forces make use of torture,<sup>57</sup> elaborating that it accepted recommendations "including those concerning protection of all Indonesians from discrimination and violence."<sup>58</sup> Nonetheless, Indonesia's response to suggestions that it abolish the death penalty<sup>59</sup> was that "the death penalty [is] a prevailing positive law with a more robust safeguard in due process under the current revision of the Penal Code." In this way, Indonesia only noted without accepting those recommendations.<sup>60</sup>

While Indonesia immediately accepted recommendations promoting freedom of expression,<sup>61</sup> press and assembly, it waited until September 2017 to accept the recommendation about the "revision of the Penal Code."<sup>62</sup> Indonesia also agreed that HRDs need efficient protection and to combat intimidation against them<sup>63</sup> and likewise accepted the recommendations that specifically concerned HRDs fighting for LGBTIQ rights.<sup>64</sup>

Finally, during the UPR Interactive Dialogue, Indonesia reiterated its efforts to address the issue of injustice, "including alleged human rights violations in Papua", and to develop the

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<sup>51</sup> Draft *Report of the Human Rights Council on its thirty-sixth session*, U.N. Doc. Future A/HRC/36/2, 29 September 2017, paras. 372-373, 376-377.

<sup>52</sup> This is standard diplomatic language commonly used by States under review to declare that they do not accept a given recommendation.

<sup>53</sup> *Report of the Working Group on the Universal Periodic Review: Indonesia, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/36/7/Add.1, 19 September 2017, p. 3, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/IDIndex.aspx> (last visited 18 October 2017).

<sup>54</sup> Draft *Report of the Human Rights Council on its thirty-sixth session*, U.N. Doc. Future A/HRC/36/2, 29 September 2017, para. 346.

<sup>55</sup> Third UPR cycle: *Report of the Working Group*, Indonesia, para. 141.58; Third UPR cycle: *Report of the Working Group, Addendum*, Indonesia, p. 3.

<sup>56</sup> Third UPR cycle: *Report of the Working Group*, Indonesia, paras. 139.2-139.5, 139.22-139.23, 139.53.

<sup>57</sup> Third UPR cycle: *Report of the Working Group, Addendum*, Indonesia, p. 3.

<sup>58</sup> Draft *Report of the Human Rights Council on its thirty-sixth session*, U.N. Doc. Future A/HRC/36/2, 29 September 2017, para. 345.

<sup>59</sup> Third UPR cycle: *Report of the Working Group*, Indonesia, paras. 31, 39, 65, 126.

<sup>60</sup> Third UPR cycle: *Report of the Working Group, Addendum*, Indonesia, p. 3.

<sup>61</sup> Third UPR cycle: *Report of the Working Group*, Indonesia, paras. 139.13, 139.67, 139.76.

<sup>62</sup> Third UPR cycle: *Report of the Working Group*, Indonesia, paras. 141.30-141.31; Third UPR cycle: *Report of the Working Group, Addendum*, Indonesia, p. 3; Draft *Report of the Human Rights Council on its thirty-sixth session*, U.N. Doc. Future A/HRC/36/2, 29 September 2017, para. 345.

<sup>63</sup> Third UPR cycle: *Report of the Working Group*, Indonesia, paras. 139.24, 139.64-139.66.

<sup>64</sup> Third UPR cycle: *Report of the Working Group*, Indonesia, para. 141.56; Third UPR cycle: *Report of the Working Group, Addendum*, Indonesia, p. 3.

capacity and knowledge on human rights in all provinces and cities.<sup>65</sup> Concerning recommendations demanding to investigate “past human rights abuses,”<sup>66</sup> however, Indonesia only noted them without acceptance.<sup>67</sup>

## Situation of the LGBTIQ Community and its HRDs in Indonesia

### Prohibition of Torture

**Criminalisation of Consensual Same-Sex Sexual Relations:** In September 2014, the Indonesian province of Aceh — which implements its own set of *sharia* laws — criminalised consensual same-sex sexual relations. Under the new law, “any person found guilty of ‘sodomy or lesbianism’ could face 100 cane lashes, a fine of 1,000 grams of fine gold, or almost eight and a half years in prison.”<sup>68</sup>

**Use of Flogging as Punishment:** In May 2017, there was worldwide media coverage over the case of two gay men tried in Aceh for consensual sexual relations.<sup>69</sup> The pair were ultimately sentenced to 85 lashes each.<sup>70</sup> The men had been arrested by a vigilante neighbourhood group which filmed themselves beating the pair and calling them dogs, in a video shared widely in Indonesia.<sup>71</sup>

**Legal Status of Flogging:** The UN Committee Against Torture recognises stoning and flogging as torture.<sup>72</sup> Indonesia ratified the CAT in 1998, but did so with a reservation that it would implement certain articles of the Convention — including Article 2 on legislating against torture — with “strict compliance with the principles of the sovereignty and territorial integrity of States.”<sup>73</sup>

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<sup>65</sup> Third UPR cycle: *Report of the Working Group*, Indonesia, paras. 12, 136.

<sup>66</sup> Third UPR cycle: *Report of the Working Group*, Indonesia, paras. 141.62-141.63.

<sup>67</sup> Third UPR cycle: *Report of the Working Group, Addendum*, Indonesia, p. 3.

<sup>68</sup> Ashitha Nagesh, “A lesbian couple arrested for hugging in Indonesia are being forced to go to ‘rehab’”, Metro, 3 October 2015, available at <http://metro.co.uk/2015/10/03/a-lesbian-couple-arrested-for-hugging-in-indonesia-are-being-forced-to-go-to-rehab-5419863/> (last visited 17 July 2017).

<sup>69</sup> Lizzie Dearden, “Sharia court in Indonesia sentences two gay men to 85 lashes each after being caught having sex”, The Independent, 17 May 2017, available at <http://www.independent.co.uk/news/world/asia/islamic-court-indonesia-gay-men-85-lashes-sex-caught-homosexuality-laws-first-time-khairil-jamal-a7740626.html> (last visited 17 July 2017); “Two men in Indonesia endure public flogging for gay sex”, The Telegraph, 23 May 2017, available at <http://www.telegraph.co.uk/news/2017/05/23/two-men-indonesia-endure-public-flogging-gay-sex/> (last visited 17 July 2017); “Indonesia’s Aceh: Two gay men sentenced to 85 lashes”, BBC, 17 May 2017, available at <http://www.bbc.com/news/world-asia-39945651> (last visited 17 July 2017).

<sup>70</sup> Lizzie Dearden, “Sharia court in Indonesia sentences two gay men to 85 lashes each after being caught having sex”, The Independent, 17 May 2017.

<sup>71</sup> Lizzie Dearden, “Sharia court in Indonesia sentences two gay men to 85 lashes each after being caught having sex”, The Independent, 17 May 2017; “Indonesia’s Aceh: Two gay men sentenced to 85 lashes”, BBC, 17 May 2017.

<sup>72</sup> Human Rights Watch, “Indonesia: New Aceh Law Imposes Torture”, 11 October 2009, available at <https://www.hrw.org/news/2009/10/11/indonesia-new-aceh-law-imposes-torture> (last visited 17 July 2017).

<sup>73</sup> In particular, Articles 1, 2, and 3 of the CAT: United Nations, Treaty Collection, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-o&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-o&chapter=4&lang=en) (last visited 17 July 2017).

As at the time of publication, there is still no definition of torture in Indonesian national law notwithstanding Indonesia's acceptance of numerous recommendations in this regard<sup>74</sup> in the second<sup>75</sup> and third<sup>76</sup> UPR cycles. Thus, Aceh's practice of flogging currently remains legal even though it is contrary to Indonesia's international obligations.

## Right to Equality and Non-Discrimination

**Government Position:** 2016 saw a noted rise in anti-LGBTIQ activity in Indonesia.<sup>77</sup> This appeared to stem from a 24 January 2016 statement made by the Minister of Higher Education, Muhammad Nasir, that universities served as a "moral safeguard", whereas the LGBTIQ community corrupted morality.<sup>78</sup> At the height of the ensuing furore, Presidential Spokesperson Johan Budi stated in August 2016 that "there is no room in Indonesia for the proliferation of the LGBT movement."<sup>79</sup>

In contrast, in October 2016, the President, Joko Widodo, stated that "the police must act" against moves by groups or individuals to harm or deny the rights of LGBT people and that "there should be no discrimination against anyone."<sup>80</sup> However, he later qualified his statement by stating that "in Indonesia, beliefs [generally] do not allow [LGBT], Islam does not allow it."<sup>81</sup> Similarly, in July 2017, the President said of the LGBTIQ community that while Indonesia remained a "tolerant nation", it had "its own religious norms, unique values and also cultures that must be respected."<sup>82</sup>

**Persecution for Hugging:** In October 2015, two teenage women hugging each other in a public place in Banda Aceh, Aceh's capital. The two were suspected of lesbianism, arrested,

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<sup>74</sup> Second UPR cycle: *National Report*, Indonesia, para. 30; Third UPR cycle: *National Report*, Indonesia, para. 129.

<sup>75</sup> Second UPR cycle: *Report of the Working Group*, Indonesia, paras. 108.26-108.29.

<sup>76</sup> Third UPR cycle: *Report of the Working Group*, Indonesia, paras. 139.2-139.5, 139.22-139.23, 139.53.

<sup>77</sup> This is discussed in subsequent sections of this Country Profile.

<sup>78</sup> "LGBT not welcome at university: Minister", *The Jakarta Post*, 25 January 2016, available at <http://www.thejakartapost.com/news/2016/01/25/lgbt-not-welcome-university-minister.html> (last visited 17 August 2017); Human Rights Watch, "These Political Games Ruin Our Lives' Indonesia's LGBT Community Under Threat", 2016, p. 1, available at [https://www.hrw.org/sites/default/files/report\\_pdf/indonesia0816\\_web\\_3.pdf](https://www.hrw.org/sites/default/files/report_pdf/indonesia0816_web_3.pdf) (last visited 18 August 2017).

<sup>79</sup> Agence France-Presse, "'No room' in Indonesia for gay rights, says president's spokesman", *The Guardian*, 11 October 2016, available at <https://www.theguardian.com/world/2016/aug/11/no-room-in-indonesia-for-gay-rights-says-president-spokesman> (last visited 18 July 2017).

<sup>80</sup> Phelim Kine, "Indonesia President Jokowi Defends LGBT Rights", Human Rights Watch, 20 October 2016, available at <https://www.hrw.org/news/2016/10/20/indonesia-president-jokowi-defends-lgbt-rights> (last visited 18 July 2017).

<sup>81</sup> Phelim Kine, "Indonesia President Jokowi Defends LGBT Rights", Human Rights Watch, 20 October 2016.

<sup>82</sup> John Chalmers and Eveline Dabrata, "Indonesia's reputation as a model of moderate Islam intact - president", *Reuters*, 3 July 2017, available at <https://www.reuters.com/article/us-indonesia-president-islam-exclusive/exclusive-indonesias-reputation-as-a-model-of-moderate-islam-intact-president-idUSKBN19O15C> (last visited 23 October 2017).

detained, and forced into rehabilitation.<sup>83</sup> Human Rights Watch denounced this act as discriminatory and a violation of basic rights.<sup>84</sup>

**Targeting LGBTIQ Students at Universities:** LGBTIQ students have reportedly been targeted at university. In February 2016, conservative media attacked the Support Group and Resource Center on Sexuality Studies (**SGRC**) at the University of Indonesia in Jakarta, a group which Minister of Higher Education Muhammad Nasir had singled out for criticism in his January 2016 remarks about the dangers of the LGBTIQ community.<sup>85</sup> The SGRC provides an LGBT Peer Support Network, an online counselling service for LGBTIQ individuals and their supporters to share their experiences.<sup>86</sup>

In November 2016, Rector Syamsu Qama Badu of the State University of Gorontalo stated that stern measures would be taken against LGBT students on campus. Students would, among other things, be asked to attend counselling, where they would be given "special treatment" so that they could return to "normalcy."<sup>87</sup>

It is noteworthy that in its second UPR cycle, in response to comments concerning discrimination against people of diverse sexual orientation and gender identity, Indonesia committed to review its laws and decrees restricting various freedoms in order to prevent any risk of discrimination and guarantee the full respect of the rights of persons belonging to minorities.<sup>88</sup> Incidents highlighting the inequality of and discrimination against the LGBTIQ community indicate areas where such review efforts should concentrate.

## Freedom of Association and Assembly

**Disruption of LGBTIQ Civil Society Events:** In March 2010, hundreds of activists from Islamic groups disrupted the International Lesbian and Gay Association Asia (**ILGA**) conference in Surabaya, Indonesia.<sup>89</sup> The local police had refused to issue permits to the conference organisers, with reports suggesting that this was due to opposition by Islamic groups.<sup>90</sup> Protesters forced their way into the hotel hosting the conference and occupied the premises,

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<sup>83</sup> Ashitha Nagesh, "A lesbian couple arrested for hugging in Indonesia are being forced to go to 'rehab'", Metro, 3 October 2015.

<sup>84</sup> "Indonesia: 'Suspected Lesbians' Detained", Human Rights Watch, 2 October 2015, available at <https://www.hrw.org/news/2015/10/02/indonesia-suspected-lesbians-detained> (last visited 17 July 2017).

<sup>85</sup> "LGBT not welcome at university: Minister", The Jakarta Post, 25 January 2016.

<sup>86</sup> Haeril Halim & Tama Salim, "Civil liberties at stake as govt puts restrictions on LGBT groups", The Jakarta Post, 17 February 2016, available at <http://www.thejakartapost.com/news/2016/02/17/civil-liberties-stake-govt-puts-restrictions-lgbt-groups.html> (last visited 18 July 2017).

<sup>87</sup> Syamsul Huda M.Suhari & Haeril Halim, "UNG to force LGBT students to change their sexual orientation", The Jakarta Post, 4 November 2016, available at <http://www.thejakartapost.com/news/2016/11/04/ung-force-lgbt-students-change-their-sexual-orientation.html> (last visited 18 July 2017).

<sup>88</sup> Second UPR cycle: *Report of the Working Group*, Indonesia, para. 108.103.

<sup>89</sup> "Human Rights Reports for 2010: Sexual Orientation / Gender Identity References, East Asia and the Pacific", U.S. Department of State, 8 April 2011, p. 6, available at [http://www.globalequality.org/storage/documents/pdf/2010\\_hr\\_report\\_sogi\\_references-eastasiapacific.pdf](http://www.globalequality.org/storage/documents/pdf/2010_hr_report_sogi_references-eastasiapacific.pdf) (last visited 18 July 2017).

<sup>90</sup> "Human Rights Reports for 2010: Sexual Orientation / Gender Identity References, East Asia and the Pacific", U.S. Department of State, 8 April 2011, p. 6.

which led to the cancellation of the conference.<sup>91</sup> One month later, in April 2010, a training of transgender activists by Indonesia's National Commission on Human Rights was similarly disrupted by Islamic groups.<sup>92</sup>

**Fatwa on Participation in LGBTIQ Advocacy:** Following a January 2016 statement by Minister of Higher Education Muhammad Nasir against the LGBTIQ community, in February 2016, the Indonesian Ulema Council — the body of top Muslim clerics — confirmed it was preparing a *fatwa* recommending the prosecution of Muslims who joined LGBT-related activities.<sup>93</sup> The Indonesian Ulema Council soon after announced that it rejects "all forms of propaganda, promotion and support towards lesbian, gay, bisexual and transgender (LGBT) in Indonesia", with the Council's chairman, Maruf Amin, declaring that "LGBT activities and campaign are forbidden in Islam and other Abrahamic religions."<sup>94</sup> The Indonesian government did not comment on the *fatwa*.

The limitations on and threats against the ability of the LGBTIQ community and their HRDs to associate and assemble contradict Indonesia's acceptance during its second and third UPR cycles of recommendations demanding enhanced protection and independence for HRDs and prosecution for the acts of violence perpetrated against them.<sup>95</sup>

## The Right to Freely Participate in the Cultural Life of the Community

**Disruption by Private Actors:** In May and June 2010, LGBTIQ organisations celebrated International Day against Homophobia (IDAHO) nationwide by hosting public discussion groups, public marches and other awareness-raising activities.<sup>96</sup> However, threats from Islamic groups forced organisers to cancel an open-air concert in Yogyakarta scheduled for 22 May.<sup>97</sup>

Similarly, on 28 September 2010, the "Q! Film Festival" celebrating gay cinema was targeted by Islamic groups. The protesters "chanted homophobic slogans and accused festival

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<sup>91</sup> "Human Rights Reports for 2010: Sexual Orientation / Gender Identity References, East Asia and the Pacific", U.S. Department of State, 8 April 2011, p. 6.

<sup>92</sup> "Human Rights Reports for 2010: Sexual Orientation / Gender Identity References, East Asia and the Pacific", U.S. Department of State, 8 April 2011, p. 6.

<sup>93</sup> Haeril Halim & Indra Harsaputra, "Ulema Council to ban Muslims from LGBT advocacy", The Jakarta Post, 9 February 2016, available at <http://www.thejakartapost.com/news/2016/02/09/ulema-council-ban-muslims-lgbt-advocacy.html> (last visited 18 July 2017); "MUI wants law to ban LGBT activities", The Jakarta Post, 17 February 2016, available at <http://www.thejakartapost.com/news/2016/02/17/mui-wants-law-ban-lgbt-activities.html> (last visited 18 July 2017).

<sup>94</sup> "MUI Rejects All Forms of LGBT Promotion", Tempo.Co, 18 February 2016, available at <http://en.tempo.co/read/news/2016/02/18/055746058/MUI-Rejects-All-Forms-of-LGBT-Promotion> (last visited 18 July 2017).

<sup>95</sup> Second UPR cycle: *Report of the Working Group*, Indonesia, paras. 108.15-108.119; Third UPR cycle: *Report of the Working Group*, Indonesia, paras. 141.30-141.31; Third UPR cycle: *Report of the Working Group, Addendum*, Indonesia, p. 3; Draft *Report of the Human Rights Council on its thirty-sixth session*, U.N. Doc. Future A/HRC/36/2, 29 September 2017, para. 345.

<sup>96</sup> "Human Rights Reports for 2010: Sexual Orientation / Gender Identity References, East Asia and the Pacific", U.S. Department of State, 8 April 2011, p. 6.

<sup>97</sup> "Human Rights Reports for 2010: Sexual Orientation / Gender Identity References, East Asia and the Pacific", U.S. Department of State, 8 April 2011, p. 6.



organisers of 'blasphemy, threatening to burn down a venue if screenings did not halt.'<sup>98</sup> The Indonesian Ulema Council also condemned the festival.<sup>99</sup> This led some Q! Film Festival venues to cancel screenings and others to advertise more discreetly by direct text or instant messaging.<sup>100</sup> In 2011, the Q! Film Festival was held on a smaller scale.<sup>101</sup> In 2012, following threats of litigation by festival organisers, police provided the festival with a recommendation that meant it could proceed.<sup>102</sup> It was reported, however, that police declined to provide protection, resulting in the withdrawal of three of the eight venues scheduled to participate in the festival.<sup>103</sup>

In November 2014, a rally was held in Yogyakarta to celebrate the Transgender Day of Remembrance. At the end of the event, unknown assailants attacked, taking banners away from participants and dragging, kicking and pushing them.<sup>104</sup> Although most participants fled, four were left behind and beaten by the attackers.<sup>105</sup> In December 2014, the ASEAN SOGIE Caucus responded with a call for an investigation into the attacks and the "recurring violence and intolerance towards minorities in Yogyakarta."<sup>106</sup> It also called "for the protection of the human rights defenders in Yogyakarta from possible reprisals from non-state actors, including the assailants."<sup>107</sup>

In 2015, members of the LGBTIQ community in Yogyakarta called on the local police to locate the perpetrators who had attacked the 2014 rally marking the Transgender Day of Remembrance.<sup>108</sup> The LGBTIQ community staged a silent rally at the Yogyakarta police office

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<sup>98</sup> Ben Child, "Gay film festival attacked by masked Islamic protesters", The Guardian, 29 September 2010, available at <https://www.theguardian.com/film/2010/sep/29/gay-film-festival-jakarta-attacked> (last visited 18 July 2017).

<sup>99</sup> "Human Rights Reports for 2010: Sexual Orientation / Gender Identity References, East Asia and the Pacific", U.S. Department of State, 8 April 2011, p. 6.

<sup>100</sup> "Being LGBT in Asia: Indonesia Country Report", United Nations Development Programme, 2014, p. 43, available at [https://www.usaid.gov/sites/default/files/documents/1861/Being\\_LGBT\\_in\\_Asia\\_Indonesia\\_Country\\_Report.pdf](https://www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Indonesia_Country_Report.pdf) (last visited 18 July 2017).

<sup>101</sup> "Being LGBT in Asia: Indonesia Country Report", UNDP, 2014, p. 43.

<sup>102</sup> "Being LGBT in Asia: Indonesia Country Report", UNDP, 2014, p. 43.

<sup>103</sup> "Human Rights Reports for 2013: Indonesia", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2014, p. 32, available at <https://www.state.gov/documents/organization/220408.pdf> (last visited 18 July 2017).

<sup>104</sup> Bambang Muryanto, "Unidentified group attacks transgender rally, injures 4", The Jakarta Post, 22 November 2014, available at <http://www.thejakartapost.com/news/2014/11/22/unidentified-group-attacks-transgender-rally-injures-4.html> (last visited 18 July 2017).

<sup>105</sup> Bambang Muryanto, "Unidentified group attacks transgender rally, injures 4", The Jakarta Post, 22 November 2014.

<sup>106</sup> "The ASC calls for immediate investigation of the violent attacks at the Transgender Day of Remembrance Event in Yogyakarta, Indonesia", ASEAN SOGIE Caucus, 28 December 2014, available at <http://www.aseansogiecaucus.org/statements/asc-statements/26-the-asc-calls-for-immediate-investigation-of-the-violent-attacks-at-the-transgender-day-of-remembrance-event-in-yogyakarta-indonesia?highlight=WyJ5b2d5YWthcnRh10=> (last visited 21 November 2016).

<sup>107</sup> "The ASC calls for immediate investigation of the violent attacks at the Transgender Day of Remembrance Event in Yogyakarta, Indonesia", ASEAN SOGIE Caucus, 28 December 2014.

<sup>108</sup> "Islands in focus: Probe into attack on LGBT group urged", The Jakarta Post, 23 November 2015, available at <http://www.thejakartapost.com/news/2015/11/23/islands-focus-probe-attack-lgbt-group-urged.html> (last visited 18 July 2017).

to urge the police to complete the investigation,<sup>109</sup> expressing hope that completing the investigation would demonstrate to the public that the LGBTIQ community has the right to free speech and to educate the public on their right to just treatment.<sup>110</sup> It remains unclear, however, whether the investigation was completed.

In February 2016, the organisers of a Valentine's Day LGBTIQ party in Surabaya, East Java elected to postpone the event. They reported that police "were unable to provide security to revelers" and had advised that, "[i]n the event of an attack [by religious groups], police could also not blame the [attackers] because the lesbian, gay, bisexual and transsexual (LGBT) community has not been recognized in Indonesia."<sup>111</sup>

**Role of the Police:** There have been multiple reports of the police actively preventing LGBTIQ cultural and community activities being staged. For instance, in May 2012, the police withdrew their initial permission for LGBT and interfaith-youth activists and HRDs to hold a cultural performance to celebrate the International Day Against Homophobia and Transphobia (**IDAHOT**), following threats by the Islamic Defenders Front.<sup>112</sup>

In February 2016, Yogyakarta police banned HRDs of the LGBT support group, Democracy Struggle Solidarity (**SPD**), from holding a rally in Yogyakarta.<sup>113</sup> The police chief reportedly said that the rally was banned due to late permit application, and to avoid clashes with the Islamic People's Forum who had already applied to host a counter-rally against SPD.<sup>114</sup> He added, however, that he hoped the SPD could change the schedule of their rally and that police would protect them.<sup>115</sup>

Also in February 2016, the police were reportedly involved in an operation, together with the group Islamic Jihadist Front (**FJI**), in closing an Islamic boarding school for *waria* in Yogyakarta.

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<sup>109</sup> Bambang Muryanto, "LGBT people still suffer from widespread violent abuse in Yogyakarta", The Jakarta Post, 22 November 2015, available at <http://www.thejakartapost.com/news/2015/11/22/lgbt-people-still-suffer-widespread-violent-abuse-yogyakarta.html> (last visited 18 July 2017).

<sup>110</sup> "Islands in focus: Probe into attack on LGBT group urged", The Jakarta Post, 23 November 2015.

<sup>111</sup> Haeril Halim & Indra Harsaputra, "Ulema Council to ban Muslims from LGBT advocacy", The Jakarta Post, 9 February 2016, available at <http://www.thejakartapost.com/news/2016/02/09/ulema-council-ban-muslims-lgbt-advocacy.html> (last visited 17 July 2017).

<sup>112</sup> "Indonesia: Police Allow Fundamentalists to Disrupt Another LGBT Event", OutRight Action International, 8 June 2012, available at <https://www.outrightinternational.org/content/indonesia-police-allow-fundamentalists-disrupt-another-lgbt-event> (last visited 18 July 2017).

<sup>113</sup> Bambang Muryanto, "Police ban rally held by LGBT supporters", The Jakarta Post, 24 February 2016; Elly Burhaini Faizal, "LGBT supporters in Yogyakarta prohibited from staging rally", The Jakarta Post, 21 March 2016, available at <http://www.thejakartapost.com/news/2016/02/25/lgbt-supporters-in-yogyakarta-prohibited-from-staging-rally.html> (last visited 18 July 2017).

<sup>114</sup> Bambang Muryanto, "Police ban rally held by LGBT supporters", The Jakarta Post, 24 February 2016; Elly Burhaini Faizal, "LGBT supporters in Yogyakarta prohibited from staging rally", The Jakarta Post, 21 March 2016.

<sup>115</sup> Bambang Muryanto, "Police ban rally held by LGBT supporters", The Jakarta Post, 24 February 2016; Elly Burhaini Faizal, "LGBT supporters in Yogyakarta prohibited from staging rally", The Jakarta Post, 21 March 2016.

Despite the private nature of the school — used simply for praying once a week — the *waria* who used it faced harassment and scare tactics that led to the school's closing.<sup>116</sup>

In March 2016, following these acts, the ASEAN SOGIE Caucus responded to the situation in Indonesia with a Joint Statement that partly reads:

We express grave disappointment over the Indonesian government's lack of political will to put a stop to the wave of discriminatory statements and attacks against LGBTIQ persons, and its failure to ensure their safety and protection. We call on the Indonesian government to respect, protect and promote the human rights of LGBTIQ people.<sup>117</sup>

In May 2016, it was reported that a group belonging to the police force, together with a reactionary body, disrupted an art space in Yogyakarta.<sup>118</sup> The group confiscated exhibition materials at what was suspected to be the location of the IDAHOT 2016 celebrations.<sup>119</sup>

**Role of Universities:** University administrations have also actively prevented LGBTIQ cultural and community activities being staged on their campuses. In September 2014, the University of Sanata Dharma in Yogyakarta cancelled a seminar on LGBTIQ issues due to threats by the Islamic People's Forum to forcibly shut down the event. That group claimed that "the event would propagate the spread of homosexuality" which, it said, "violated Islamic values and social morality."<sup>120</sup> Similarly, in November 2015, Brawijaya University in Malang cancelled an LGBTIQ event due to threats of an attack,<sup>121</sup> while the Rector of State Diponegoro University forbade students from holding discussions on LGBTIQ issues on campus on the basis that it was contrary to religious teachings.<sup>122</sup>

Restrictions on and threats against the LGBTIQ community's ability to participate in the cultural life of the community contradict Indonesia's acceptance in its second UPR demanding enhanced protection and independence for HRDs and prosecution for acts of violence perpetrated against them.<sup>123</sup> The active role of the police in imposing such restrictions highlights the need for Indonesia to take further steps, in accordance with the

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<sup>116</sup> "These Political Games Ruin Our Lives' Indonesia's LGBT Community Under Threat", Human Rights Watch, 2016, pp. 30-33, available at [https://www.hrw.org/sites/default/files/report\\_pdf/indonesia0816\\_web\\_3.pdf](https://www.hrw.org/sites/default/files/report_pdf/indonesia0816_web_3.pdf) (last visited 4 July 2017).

<sup>117</sup> "Joint Statement on the Deteriorating Situation of LGBTIQ Rights in Indonesia", APCOM, 14 March 2016, available at <https://apcom.org/2016/03/14/4901/> (last visited 20 July 2017).

<sup>118</sup> "Urgent Alert", ASEAN SOGIE Caucus, Facebook Page, 31 May 2016, available at <https://www.facebook.com/aseansogie/posts/1056596757765583> (last visited 18 July 2017).

<sup>119</sup> "Urgent Alert", ASEAN SOGIE Caucus, Facebook Page, 31 May 2016.

<sup>120</sup> Bambang Muryanto, "Police ban rally held by LGBT supporters", The Jakarta Post, 24 February 2016, available at <http://www.thejakartapost.com/news/2016/02/24/police-ban-rally-held-lgbt-supporters.html> (last visited 18 July 2017).

<sup>121</sup> "Indonesia Must Protect LGBT Rights: Human Rights Watch", The Jakarta Post, 12 February 2016, available at <http://www.thejakartapost.com/news/2016/02/12/indonesia-must-protect-lgbt-rights-human-rights-watch.html> (last visited 18 July 2017).

<sup>122</sup> "Diponegoro University forbids discussion on LGBT issues", The Jakarta Post, 13 November 2015, available at <http://www.thejakartapost.com/news/2015/11/13/diponegoro-university-forbids-discussion-lgbt-issues.html> (last visited 18 July 2017).

<sup>123</sup> Second UPR cycle: *Report of the Working Group*, Indonesia, paras. 108.15-108.119.

recommendations it accepted during both its first and second UPRs, to provide additional human rights training for police.

Finally, the involvement of the police and administrators including of public universities recall Indonesia's commitments, in its second UPR, to review its laws and decrees restricting various freedoms in order to prevent any risk of discrimination and guarantee the full respect of the rights of persons belonging to minorities,<sup>124</sup> and in its third UPR, to prioritise progress on equality and non-discrimination, including for the LGBTIQ community.<sup>125</sup>

## Right to Privacy

**Efforts to Criminalise Sexual Relations Nationwide:** In July 2016, a group of academics and activists applied to the Indonesian Constitutional Court to annul a number of articles in the Indonesian Criminal Code.<sup>126</sup> This case, which is ongoing, has become a focal point for the right to privacy, as it relates to the legality of sex outside of wedlock (adultery).<sup>127</sup> In addition, while one plaintiff said that the case "was not intending to criminalize those who have a deviant sexual orientation. That is not the point. They can be free to live but not show their lifestyle",<sup>128</sup> it may result in the criminalisation of homosexual relations. Most recently, it was reported that in a January 2017 hearing, the Indonesian Ministry of Law and Human Rights defended the right to privacy and submitted that adultery did not constitute a criminal offence.<sup>129</sup>

**Interferences in the Private Sphere:** There have also been reports of interferences in the private sphere. In mid-February 2016, men attempted to enter the room of a lesbian couple and insulted and threatened to rape them. There have also been multiple reports of attempts to identify and locate the homes of trans people, including in Yogyakarta and Medan.<sup>130</sup>

In a similar incident also in February 2016, one of the members and founders of the University of Indonesia's SGRC stated that "[o]ne of the members' parents was called by their boss and asked whether their child was a part of the LGBT community or not. The issue poses a serious threat to the parent's job."<sup>131</sup>

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<sup>124</sup> Second UPR cycle: *Report of the Working Group*, Indonesia, para. 108.103.

<sup>125</sup> Third UPR cycle: *Report of the Working Group*, Indonesia, para. 141.58; Third UPR cycle: *Report of the Working Group, Addendum*, Indonesia, p. 3.

<sup>126</sup> Hans Nicholas Jong, "Gay sex may be outlawed", *The Jakarta Post*, 3 August 2016, available at <http://www.thejakartapost.com/news/2016/08/03/gay-sex-may-be-outlawed.html> (last visited 17 July 2017).

<sup>127</sup> Andreas Harsono, "Indonesian Government Says Adultery is Not a Crime", *Human Rights Watch*, 18 January 2017, available at <https://www.hrw.org/news/2017/01/18/indonesian-government-says-adultery-not-crime> (last visited 15 August 2017).

<sup>128</sup> Ali Kotarumalos, "Court hears case on criminalizing gay sex", *The Jakarta Post*, 4 August 2016, available at <http://www.thejakartapost.com/news/2016/08/04/court-hears-case-on-criminalizing-gay-sex.html> (last visited 17 July 2017).

<sup>129</sup> Andreas Harsono, "Indonesian Government Says Adultery is Not a Crime", *Human Rights Watch*, 18 January 2017.

<sup>130</sup> "These Political Games Ruin Our Lives' Indonesia's LGBT Community Under Threat", *Human Rights Watch*, 2016, pp. 33-35.

<sup>131</sup> Haeril Halim & Aldrin Rocky Sampeliling, "Fear haunts LGBT community", *The Jakarta Post*, 26 January 2016.

In May 2017, 14 people were arrested in Surabaya, and 141 men in Jakarta, for participating in alleged private "gay sex parties." It is reported that these people will be charged under anti-pornography laws which criminalise strip-teasing for the public as a form of pornography.<sup>132</sup>

Wahid Foundation Executive Director Yenny Wahid has warned that this trend could result in "[p]rivate police forces [emerging] from among extremist groups, stalking people and using the law to intimidate other people."<sup>133</sup> This trend could also serve as a focal point for Indonesia's review of its laws and decrees restricting various freedoms in order to prevent any risk of discrimination and guarantee the full respect of the rights of persons belonging to minorities<sup>134</sup> – a review process to which Indonesia committed during its second UPR cycle.

## Freedom of Expression

**Blocking of LGBTIQ Civil Society Website:** In mid-2013, the Secretary General of LGBT rights NGO, Ourvoice, learned that "his organisation's website was blocked by several internet service providers."<sup>135</sup> Two months later, it was identified that keywords such as "gay" and "lesbian" in the database led to the automatic blocking of the website by the Internet service providers.<sup>136</sup> Later in 2013, the automatic blocking of the Ourvoice website was lifted.<sup>137</sup>

**Censorship of LGBTIQ Emojis in Instant Messaging Services:** In early February 2016, the Indonesian government ordered instant messaging providers to remove LGBTIQ emojis and stickers from their applications.<sup>138</sup> One provider, Line, complied, and it was reported the government would order others to do the same.<sup>139</sup> In September 2016, the government banned apps designed for LGBTIQ people after drawing a link between homosexuality and child prostitution.<sup>140</sup> LGBTIQ HRD Ryan Korbarri of umbrella CSO Arus Pelangi responded that the government "made a false link between pedophilia and homosexuality. These two things

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<sup>132</sup> "Indonesian police arrest 141 men over 'gay sex party'", BBC, 22 May 2017, available at <http://www.bbc.com/news/world-asia-39996508> (last visited 17 August 2017).

<sup>133</sup> Hans Nicholas Jong, "Civil rights threatened by demand to outlaw casual sex", The Jakarta Post, 4 August 2016, available at <http://www.thejakartapost.com/news/2016/08/04/civil-rights-threatened-demand-outlaw-casual-sex.html> (last visited 17 July 2017).

<sup>134</sup> Second UPR cycle: *Report of the Working Group*, Indonesia, para. 108.103.

<sup>135</sup> Asian Human Rights Commission, "The State of Human Rights in Indonesia, 2013: Democracy Incomplete: Ignored Homework in 15 Years of Reform", AHRC Doc. AHRC-SPR-002-2013, 10 December 2013, p. 15, available at <http://www.cccindia.co/HumanRightin-Indonesia.pdf> (last visited 18 July 2017).

<sup>136</sup> "Freedom on the Net: Indonesia", Freedom House, 2015, p. 8, available at [https://freedomhouse.org/sites/default/files/resources/FOTN%202015\\_Indonesia.pdf](https://freedomhouse.org/sites/default/files/resources/FOTN%202015_Indonesia.pdf) (last visited 18 July 2017).

<sup>137</sup> "Freedom on the Net: Indonesia", Freedom House, 2015, p. 8.

<sup>138</sup> "Indonesia Bans Gay Emoji and Stickers From Messaging Apps", The Guardian, 12 February 2016, available at <http://www.theguardian.com/world/2016/feb/12/indonesia-bans-gay-emoji-and-stickers-from-messaging-apps> (last visited 17 July 2017).

<sup>139</sup> Including online messaging and calling applications, Facebook Messenger and WhatsApp.

<sup>140</sup> Hans Nicholas Jong, "LGBT persecution continues with apps ban", The Jakarta Post, 17 September 2016, available at <http://www.thejakartapost.com/news/2016/09/17/lgbt-persecution-continues-with-apps-ban.html> (last visited 17 July 2017).

are completely unrelated. Blocking apps for LGBT people will not solve the problem of online child prostitution."<sup>141</sup>

Restrictions on LGBTIQ freedom of expression in Indonesia contradict Indonesia's commitment in its second and third UPR cycles to protect freedom of expression.<sup>142</sup>

**Hate Messages:** In mid-February 2016, it was reported that LGBTIQ HRDs were under increasing pressure, having received messages "fuelled with hatred."<sup>143</sup> One such message was sent to National Commission on Human Rights commissioner Komnas Ham, suggesting that his support for the LGBTIQ community meant that he "was not worthy of using the name Muhammad."<sup>144</sup> Also that month, members of the University of Indonesia's Support Group and Resource Center on Sexuality Studies were attacked on social media, receiving threats via short messaging service (**SMS**), email and social media messages.<sup>145</sup>

## Conclusion

HRDs in Indonesia, including those who advocate on behalf of the LGBTIQ community, remain under threat. In recent years, HRD-led LGBTIQ events have been disrupted, and HRDs have found themselves targeted, including through hateful messages and the issuance of a *fatwa* by the Indonesian Ulema Council on Indonesian Muslims' participation in LGBTIQ-related advocacy. Nevertheless, since its first UPR cycle, Indonesia has demonstrated a commitment to HRDs. It has accepted several recommendations concerning the need to enhance protection for its HRDs, notably through prosecuting violations against them, delivering training for public officials, and enhancing freedom of expression.

In contrast, its position regarding its LGBTIQ community has been more mixed. In 2016, critical statements made by government officials regarding the LGBTIQ community and its purported incompatibility with tenets of Islam were met with a surge in anti-LGBTIQ activity. This activity was led not only by private Islamic groups but also by public officials including the police and university administrators.

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<sup>141</sup> Hans Nicholas Jong, "LGBT persecution continues with apps ban", The Jakarta Post, 17 September 2016.

<sup>142</sup> Second UPR cycle: *Report of the Working Group*, Indonesia, para. 108.103; Third UPR cycle: *Report of the Working Group*, Indonesia, paras. 139.13, 139.67, 139.76.

<sup>143</sup> Hans Nicholas Jong, Arya Dipa & Tama Salim, "Luhut defends LGBT groups", The Jakarta Post, 13 February 2016, available at <http://www.thejakartapost.com/news/2016/02/13/luhut-defends-lgbt-groups.html> (last visited 17 July 2017).

<sup>144</sup> Hans Nicholas Jong, Arya Dipa & Tama Salim, "Luhut defends LGBT groups", The Jakarta Post, 13 February 2016.

<sup>145</sup> Haeril Halim & Aldrin Rocky Sampeliling, "Fear haunts LGBT community", The Jakarta Post, 26 January 2016, available at <http://www.thejakartapost.com/news/2016/01/26/fear-haunts-lgbt-community.html> (last visited 18 July 2017).

In addition, Indonesia has consistently failed to support UPR recommendations to decriminalise same-sex sexual relations under its *sharia* law regimes in certain provinces such as Aceh. In May 2017, this led to see the first case of gay men sentenced to 85 lashes for consensual sexual activity. There have also been increased crackdowns in non-*sharia* jurisdictions; in May 2017, over 150 gay men were arrested in Indonesia's two largest cities, Jakarta and Surabaya, for participating in what was alleged to be private "gay sex parties." As a result, Indonesia's LGBTIQ community and its HRDs remain vulnerable.

## Recommendations

Following the third UPR review of Indonesia in May 2017 and in the lead-up to Indonesia's fourth UPR review in 2021 or 2022:

- CSOs should actively engage in monitoring the implementation of recommendations Indonesia accepted and/or noted during previous UPR cycles so as to gather relevant data on the improvement of the human rights situation in the country and to report at the fourth UPR cycle.
- CSOs should continue documenting violations and abuses endured by LGBTIQ people and their defenders so as to provide recommending states and the relevant UN mechanisms with solid evidence-based information.
- CSOs and recommending States should emphasise the universality and benefit to Indonesia of reforms such as the abolition of capital and corporal punishment and the decriminalisation of consensual same-sex sexual activity, and the introduction of greater protections against discrimination.
- CSOs and recommending States should work collaboratively to develop UPR recommendations for the fourth cycle that emphasise the universality and benefit to Indonesia of such reforms.

# Indonesia: LGBTIQ HRD Interview

## Human Rights of LGBTIQ Communities and HRDs: Frontline Voices



**Yuli Rustinawati,  
Founder and Chairman,  
Arus Pelangi**

### **How did you become involved in lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ) rights work?**

I started my activism in 1998 which is the time when the student movement started in Indonesia. Then I graduated, so I joined the human rights movement and around 2000/2003, after I joined one of the human rights legal institutions in Jakarta and in 2004, I met with other friends who helped found Arus Pelangi.

The reason we founded Arus Pelangi is because we worked in the legal aid

institution, and one of our gay friends said that "we've been working in human rights a lot, we haven't seen yet the legal aid institution help the LGBT people." So starting from that simple conversation, we agreed to have an organisation working for advocacy on LGBT rights. This started in 2006, but we were already handling one of the transgender murders in one of the East Javan cities in the end of 2005.

### **What have been the biggest challenges you've faced in advocating for LGBTIQ rights?**

My biggest challenge is also part of my organisation's biggest challenge. We established Arus Pelangi in a different time. At that time, people didn't agree with LGBT, the State didn't agree with LGBT. The State ignored LGBT people. Maybe at that time, people did not really care or understand LGBT issues. So the risk has been there since the beginning. Being LGBT in Indonesia has never been easy.

But what happened in January of 2016 makes everything harder. Because the State made statements against LGBTI people, it is not only difficult for people on the front line like LGBT human rights defenders, but also for the community.

This also has to do with how the State sees LGBTI people and regulators who discriminate against LGBTI people in Indonesia. I know many of us who are



LGBTIQ human rights defenders (**HRDs**) have faced the toughest times this year. We are on people's lists who are against us, we are being watched, and there is a surrounding fear amongst LGBTIQ human rights defenders (**HRDs**). There is a lot of judgment against LGBTIQ people that we are deviant and that we have an illness.

**Have you ever felt personally at risk because of your work?**

Yes, mostly it started in January 2016 until May or June because of the situation here in Indonesia, but I'm feeling better now. The damage has been done. I am one of the risk-takers, so I'm the one that talks to the media. We connect with many people, including allies and friends. We report the incidents against the LGBTIQ community, but my name is there and there is a consequent risk.

On one occasion, around March 2016, a policeman came to our office looking for me. Maybe because my name is everywhere. At that time, I was not in the office, but the police officer came to our office and said he was looking for me and wanted to check on me. But I wasn't there, and our colleagues opened the door and let him inside because the situation was so sensitive. Usually we don't let people inside, including police when we are unsure who it is. My colleagues told him I wasn't there, but it was a bit weird because our office has been in that area for a long time. This had never happened before. When he left, our lawyers arrived because it was so sudden and unexpected. This happened with other LGBTIQ human rights defenders.

We were able to have a safe house during the time from January to March, which was only for human rights defenders. We don't want to ignore our community who also face the problem during this situation, but now we're also working on cases in Aceh, there is a higher risk for us. So that is why we had the safe house for a few months. Some of us went there to "rest" for a while.

**2016 has been a difficult year for the LGBTIQ community in Indonesia. Can you tell if things have changed over the past months, and what impact that has had on your advocacy?**

What happened this year was not sudden? If we can look at two years ago, in 2014, the Ulema Council came out with the *fatwa* which said LGBT is *haram*, and they also came out with recommendations for punishment for LGBT people. The punishment is also part of the 'rehabilitation' of LGBT people.

We don't have Pride here, but we have IDAHOT since more than 7 years, which promotes discussion across the country. There was also a lot of discussion about same-sex marriage in the United States. Since years back, the State mostly says that LGBT people just campaign for same sex marriage. But that's not our goal yet — what we are asking for is tolerance of diversity — sexual and gender diversity. So, when the United States came out for same-sex marriage, there was a lot of discussion in Indonesia.

**Do you think the Universal Periodic Review (UPR) recommendations have an impact on Indonesia?**

In 2011/2012, our government agreed with 150 recommendations of the relevant UPR and another 30 were rejected. Regarding LGBT issues, we got two recommendations to promote LGBT rights, but which our government rejected.

**Do submissions by civil society to the UPR strengthen civil society and encourage Indonesia to change, or do you think it is ineffective?**

We hope it's effective for our government, as that is one of the ways we can change the situation of human rights in Indonesia. But also, if the government does nothing with the recommendations, you cannot punish the government. It is therefore based on goodwill to try and change the human rights situation in Indonesia.

But we believe this is one of the ways we can follow to improve the human rights situation, specifically the LGBT situation. This year, so many things happened, including how sexual orientation and gender identity was rejected by our government in ASEAN in the ASEAN Human Rights Declaration (**AHRD**). In Indonesia's speech to Human Rights Council (**HRC**), last SOGIE [sexual orientation, gender identity, gender expression] resolution, Indonesia voted for no and the Indonesian

representative mentioned that it would not cooperate with the Special Rapporteur for SOGI [sexual orientation, gender identity].

**What gives you hope when looking to the future of LGBTIQ rights in Indonesia?**

One of my hopes is based on our country's democracy. The process exists, the regulations exists, and we have a government body who regulates discrimination and criminalisation, but we also have the regulation that says every citizen has the same right, and no one can be punished without due process.

We have so many regulations that protect us as citizens of Indonesia, and we also have hope because we are surrounded by people who really understand human rights, especially LGBT rights. But we've also seen the situation inside the country, who are politically unsure because of the members of the LGBT community who are not on 'the right path'. But we believe that our connection with people outside Indonesia, the international community, as a member of the United Nations (**UN**), that the changes will come.

Being LGBT in Indonesia has never been easy, but the hope is there, even though the damage is also there. It is not criminal to be you. When we are together, we know we can solve all problems. Don't ever think that you are alone, because you are not alone.

# Laos: Country Profile

## Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

### Introduction

#### UPR Cycles

**First UPR Cycle:** 4 May 2010

**Second UPR Cycle:** 20 January 2015

**Third UPR Cycle:** January/February 2020

Issues concerning the lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) community and human rights defenders (**HRDs**) of the Lao People's Democratic Republic (**Laos**) were not explicitly discussed during either its first or second Universal Periodic Review (**UPR**)

cycle. The UPR submissions and recommendations do, however, include general references to rights that affect LGBTIQ people and their HRDs. Laos accepted many recommendations regarding education, freedom of expression and freedom of assembly, among other things.

Laos emphasised its commitment to anti-discrimination and improving freedom of expression and association. Yet, as this Country Profile outlines, based on the extremely limited information publicly available concerning the situation in Laos, the LGBTIQ community and their HRDs and other groups still require more protection against intimidation, ill-treatment and disappearances.

In the lead up to Laos's third UPR cycle in January/February 2020, recommending States and civil society organisations (**CSOs**) have the opportunity to develop improved UPR recommendations that aim to provide more human rights protections for HRDs and other often-targeted groups.

"I personally expect to see more from UPR in terms of assisting influencing the policy makers/making, making level to take LGBTIQ topic in an account and more, as well as to include LGBTIQ community in the decision-making level more. I believe that UPR can help making an impact for my country in terms of human rights."

**Anonymous LGBTIQ HRD**

### Past UPR Cycles for Laos

#### First UPR Cycle (4 May 2010)

**National Report Filed:**<sup>1</sup> Laos' national report for the first UPR was published on 22 February

<sup>1</sup> National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Lao People's Democratic Republic, U.N. Doc. A/HRC/WG.6/8/LAO/1, 22 February 2010, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/111/67/PDF/G1011167.pdf?OpenElement> (last visited 29 June 2017).

2010. It mentioned neither the LGBTIQ community nor HRDs. The report did, however, describe how Laos had enacted approximately 90 laws aimed at promoting and protecting human rights, including the freedom of the press<sup>2</sup> and freedom of expression.<sup>3</sup>

**Stakeholders' Submissions Made:**<sup>4</sup> The summary of the 14 stakeholders' submissions was published on 28 January 2010. Although not mentioning LGBTIQ HRDs, stakeholders expressed concern as to the lack of freedom of expression and information,<sup>5</sup> and the practical and legal restrictions to the establishment and independence of non-governmental organisations (NGOs).<sup>6</sup>

### First UPR Cycle for Laos: Recommendations Received

In its first UPR, held in May 2010, Laos received some recommendations directly relevant to HRDs – although not explicitly referring to those working with the LGBTIQ community:

- Include a definition of “discrimination” in the Constitution or other legislation (Germany).
- Provide human rights training to everyone involved in the judicial process (Japan), including judges, police officers, prison guards and all law enforcement officers (Brazil), as well as introduce human rights sensitisation in school and university curriculums (Qatar).
- Guarantee the free activity of civil society and human rights organisations (France) and allow media and civil society organisations to undertake education, advocacy, monitoring, and reporting on human rights issues (Australia).
- Strengthen its commitment to ensuring that the fundamental rights of minorities are better respected (Switzerland).
- Invite the Special Rapporteur on human rights defenders to visit the country (Norway).
- Consider establishing a national human rights institution (NHRI) in accordance with the Paris Principles (Egypt, Germany, Canada).

**Source:** *Report of the Working Group on the Universal Periodic Review: Lao People's Democratic Republic*, U.N. Doc. A/HRC/15/5, 15 June 2010, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/144/18/PDF/G1014418.pdf?OpenElement> (last visited 29 June 2017).

<sup>2</sup> First UPR cycle: *National Report*, Laos, paras. 15, 33-34.

<sup>3</sup> First UPR cycle: *National Report*, Laos, para. 45.

<sup>4</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Lao People's Democratic Republic*, U.N. Doc. A/HRC/WG.6/8/LAO/3, 28 January 2010, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/105/49/PDF/G1010549.pdf?OpenElement> (last visited 29 June 2017).

<sup>5</sup> First UPR cycle: *Stakeholders' Summary*, Laos, paras. 32-33.

<sup>6</sup> First UPR cycle: *Stakeholders' Summary*, Laos, para. 34.

**Comments Received; Response to Recommendations:** Laos also received specific comments from delegations during the UPR Interactive Dialogue concerning, among other things, efforts to protect and promote human rights,<sup>7</sup> including freedom of assembly.<sup>8</sup>

Laos reiterated its strong commitment to ensuring that all laws governing the freedoms of expression, assembly and association were implemented effectively in practice and noted that “remarkable progress and achievements had been accomplished in that area.”<sup>9</sup> Similarly, Laos did not accept recommendations demanding enhanced protection of those freedoms<sup>10</sup> because it asserted that “the constitution clearly provides for the freedoms of speech, writing and peaceful assembly not contrary to the law”<sup>11</sup> and “the Lao Government is of the view that the limitations contained in the Law on Media are deemed permissible under the ICCPR [i.e. the International Covenant on Civil and Political Rights] in regard to freedom of expression.”<sup>12</sup>

Laos accepted the recommendations against discrimination, however, in response to Switzerland’s recommendation, said that the respect of the fundamental rights of minorities was already implemented.<sup>13</sup> Laos accepted the recommendation to provide human rights training, at school, or to everyone involved in the judicial process.<sup>14</sup> In addition, it accepted in part the recommendation from Australia to make the media important actors for human rights education, but stipulated that their actions “shall be within the national constitution and laws, especially the Law on Mass Media and the Decree on Associations.”<sup>15</sup>

In contrast, Laos did not accept the recommendations which suggested the establishment of a national human rights institution.<sup>16</sup> Without providing details, Laos stated, however, that it “will consider extending invitation to the UN Special Procedures on a case-by-case basis.”<sup>17</sup>

## Second UPR Cycle (20 January 2015)

**National Report Filed:**<sup>18</sup> Laos’ national report for the second UPR was published on 5 November 2014. The report mentioned neither the LGBTIQ community nor HRDs. It did,

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<sup>7</sup> First UPR cycle: *Report of the Working Group*, Laos, paras. 38-39, 62, 68.

<sup>8</sup> First UPR cycle: *Report of the Working Group*, Laos, para. 86.

<sup>9</sup> First UPR cycle: *Report of the Working Group*, Laos, para. 88.

<sup>10</sup> First UPR cycle: *Report of the Working Group*, Laos, paras. 98.45, 98.42.

<sup>11</sup> *Report of the Working Group on the Universal Periodic Review: Lao People’s Democratic Republic, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/15/5/Add.1, 14 September 2010, para. 26, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/160/59/PDF/G1016059.pdf?OpenElement> (last visited 29 June 2017).

<sup>12</sup> First UPR cycle: *Report of the Working Group, Addendum*, Laos, para. 25.

<sup>13</sup> First UPR cycle: *Report of the Working Group*, Laos, para. 97.1.

<sup>14</sup> First UPR cycle: *Report of the Working Group*, Laos, paras. 96.26-96.27, 96.48.

<sup>15</sup> First UPR cycle: *Report of the Working Group*, Laos, para. 98.46; First UPR cycle: *Report of the Working Group, Addendum*, Laos, para. 16.

<sup>16</sup> First UPR cycle: *Report of the Working Group*, Laos, paras. 99.1-99.2.

<sup>17</sup> First UPR cycle: *Report of the Working Group, Addendum*, Laos, para. 23.

<sup>18</sup> *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Lao People’s Democratic Republic*, U.N. Doc. A/HRC/WG.6/21/LAO/1, 5 November 2014, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/198/26/PDF/G1419826.pdf?OpenElement> (last visited 29 June 2017).

however, provide an update on the practical outcomes of the laws enacted in relation to the freedoms of expression<sup>19</sup> and association.

**Stakeholders Submissions Made:**<sup>20</sup> The summary of the 18 stakeholders' submissions was published on 24 October 2014. While not mentioning LGBTIQ HRDs, stakeholders did express concern as to detention of human rights activists, often without valid legal justification;<sup>21</sup> the lack of freedom of expression and information;<sup>22</sup> and practical obstacles to the work of CSOs before and after registration.<sup>23</sup> One of the joint submissions further recommended the establishment of an NHRI in conformity with the Paris Principles.<sup>24</sup>

### Second UPR Cycle for Laos: Recommendations Received

At the second UPR, held in January 2015, Laos received a number of recommendations directly relevant to HRDs — although not explicitly referring to those working with the LGBTIQ community — namely:

- Fully implement its obligations under ICCPR to respect and ensure the right to freedom of expression (Canada, Uruguay, United Kingdom of Great Britain and Northern Ireland).
- Further promote human rights culture in the country (Uzbekistan), particularly for State agents and civil servants (Morocco).
- Establish an NHRI in accordance with the Paris Principles (Chile, Timor-Leste, Canada, Egypt, Honduras, India, Latvia, Costa Rica, Portugal, Egypt).
- Refrain from undue restrictions, such as the prohibition to engage in the promotion and protection of human rights, in the elaboration of legislation on civil society organisations, and facilitate the registration of international NGOs [i.e. non-governmental organisations] (France, Germany, Luxembourg, Spain, Poland, United States of America, Australia).
- Decriminalise defamation and misinformation (Latvia) and remove all undue restrictions on freedom of expression from the Penal Code, the Law on

<sup>19</sup> Second UPR cycle: *National Report*, Laos, paras. 46-47.

<sup>20</sup> *Summary of Stakeholders' submissions prepared by the Office of the United Nations High Commissioner for Human Rights: Lao People's Democratic Republic*, U.N. Doc. A/HRC/WG.6/21/LAO/3, 24 October 2014, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/191/35/PDF/G1419135.pdf?OpenElement> (last visited 29 June 2017).

<sup>21</sup> Second UPR cycle: *Stakeholders' Summary*, Laos, para. 10.

<sup>22</sup> Second UPR cycle: *Stakeholders' Summary*, Laos, paras. 25-27, 33.

<sup>23</sup> Second UPR cycle: *Stakeholders' Summary*, Laos, paras. 30-32.

<sup>24</sup> Second UPR cycle: *Stakeholders' Summary*, Laos, para. 3. The Paris Principles are a set of international standards guiding the work of national human rights institutions. See *Principles relating to the Status of National Human Rights Institutions*, U.N. Doc. A/RES/48/134, 20 December 1993, available at <http://www.un.org/documents/ga/res/48/a48r134.htm> (last visited 29 June 2017).

Publications and the newly adopted Internet law in conformity with the country's international human rights obligations (Latvia, Belgium).

- Take all necessary steps to protect HRDs from intimidation, ill-treatment or violence, including enforced disappearances, and to ensure prompt, impartial and thorough investigation of all allegations, including those of enforced disappearances (Ireland).
- Create a framework where civil society, including active human rights NGOs, can be included in the follow-up to the UPR without any fear of retaliation (Belgium).

**Source:** *Report of the Working Group on the Universal Periodic Review: Lao People's Democratic Republic*, U.N. Doc A/HRC/29/7, 23 March 2015, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/061/51/PDF/G1506151.pdf?OpenElement> (last visited 29 June 2017).

**Comments Received; Response to Recommendations:** Laos also received comments from delegations during the UPR Interactive Dialogue concerning efforts to promote and protect human rights, including freedom of assembly.<sup>25</sup> Laos noted that "violations of individual freedoms of speech, writing, assembly and association were criminal offenses under its Penal Law."<sup>26</sup> Laos accepted the recommendations asking to preserve the right to freedom of expression under the ICCPR and its effective exercise by NGOs and HRDs.<sup>27</sup> However, it noted without accepting some recommendations<sup>28</sup> about freedom of expression,<sup>29</sup> stating that:

the Lao PDR constitution and law guarantee the freedom of expression. No legislation in the country allows for suppression of freedoms of assembly and expression. For this very simple reason, the Lao PDR cannot accept this and other similar recommendations.<sup>30</sup>

The recommendation from Ireland concerning the protection of HRDs and judicial proceedings was noted<sup>31</sup> and Laos developed its position as follows:

[...] the Lao PDR also has other specific Committees/Commissions that deal with specific human rights. In addition, the Lao PDR's judiciary has jurisdiction to adjudicate

<sup>25</sup> Second UPR cycle: *Report of the Working Group*, Laos, paras. 40, 44.

<sup>26</sup> Second UPR cycle: *Report of the Working Group*, Laos, para. 88.

<sup>27</sup> Second UPR cycle: *Report of the Working Group*, Laos, paras. 121.36, 121.138-121.39, 121.146; *Report of the Working Group on the Universal Periodic Review: Lao People's Democratic Republic, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/29/7/Add.1, 25 June 2015, paras. 121.36, 121.138-121.39, 121.146, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/131/75/PDF/G1513175.pdf?OpenElement> (last visited 29 June 2017).

<sup>28</sup> This is standard diplomatic language commonly used by States under review to declare that they do not accept a given recommendation.

<sup>29</sup> Second UPR cycle: *Report of the Working Group*, Laos, paras. 121.129, 121.135, 121.137; Second UPR cycle: *Report of the Working Group, Addendum*, Laos, paras. 121.129, 121.135, 121.137.

<sup>30</sup> Second UPR cycle: *Report of the Working Group, Addendum*, Laos, para. 121.129.

<sup>31</sup> Second UPR cycle: *Report of the Working Group*, Laos, paras. 121.156; Second UPR cycle: *Report of the Working Group, Addendum*, Laos, paras. 121.156, 121.129.

human rights related cases, while the National Assembly receives human rights-related and other legitimate complaints from the people.<sup>32</sup>

The same answer was given when Laos noted the recommendation about the creation of an NHRI.<sup>33</sup> It stated that Laos was "putting together the existing human rights arrangements and mechanisms, in effect the Lao PDR has national mechanisms that deal with human rights, almost similar to the Paris Principles-based NHRI."<sup>34</sup>

Laos finally noted without accepting the recommendations with the goal to facilitate the registration of international NGOs.<sup>35</sup> It explained that:

[t]he Lao Government has adopted the Guidelines on the implementation of the Prime Minister's Decree on INGOs. (...) The Guidelines are not aiming at restrictions but effectively managing and facilitating the activities of INGOs [i.e. international non-governmental organisations] which have made meaningful contributions to the development of the Lao PDR. The concerns raised by some INGOs concerning the Guidelines, especially tax issue have been addressed to the satisfaction of all parties.<sup>36</sup>

Finally, Laos stated that it looked forward to "continuing cooperation and engagement in the UPR process to further exchange experience and lessons as well as to learn human rights best practices on the basis of sovereign equality, trust, and mutual respect."<sup>37</sup>

## Situation of the LGBTIQ Community and its HRDs in Laos

The LGBTIQ community and its defenders in Laos are unfortunately largely "invisible."<sup>38</sup> For this reason, obtaining data on their situation is difficult, and in turn, this Country Profile is necessarily comparatively limited in its extent.

### Freedom of Assembly, and the Right to Freely Participate in the Cultural Life of the Community

**Pride and IDAHOT Events:** On 25 June 2012, Laos held its first pride event, "Proud to be Us!", on the premises of the Embassy of the United States of America (**USA**) in Vientiane, attended

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<sup>32</sup> Second UPR cycle: *Report of the Working Group, Addendum*, Laos, para. 121.51.

<sup>33</sup> Second UPR cycle: *Report of the Working Group*, Laos, paras. 121.51-121.60; Second UPR cycle: *Report of the Working Group, Addendum*, Laos, paras. 121.51-121.60.

<sup>34</sup> Second UPR cycle: *Report of the Working Group, Addendum*, Laos, para. 121.51.

<sup>35</sup> Second UPR cycle: *Report of the Working Group*, Laos, paras. 121.129, 121.147-121.148, 121.150, 121.152-121.153, 121.155; Second UPR cycle: *Report of the Working Group, Addendum*, Laos, paras. 121.129, 121.147-121.148, 121.150, 121.152-121.153, 121.155.

<sup>36</sup> Second UPR cycle: *Report of the Working Group, Addendum*, Laos, para. 121.129.

<sup>37</sup> Second UPR cycle: *Report of the Working Group*, Laos, para. 120.

<sup>38</sup> Dominique Mosbergen, "In Laos, An Invisible Minority Is Finding Its Voice", *The WorldPost*, 19 October 2015, available at [http://www.huffingtonpost.com/entry/lgbt-laos\\_us\\_5616433ce4b0e66ad4c681cc](http://www.huffingtonpost.com/entry/lgbt-laos_us_5616433ce4b0e66ad4c681cc) (last visited 20 July 2017).



by more than one hundred people.<sup>39</sup> Anan Bouapha, one of the main organisers and a member of the community "Proud to be us – Laos," called the pride event a "first victory for the LGBT movement in this country."<sup>40</sup> In 2013, "Proud to be Us!" was re-organised with the support of various organisations, including the British and German Embassies in Vientiane.<sup>41</sup>

However, in 2014, the event was cancelled. Mixed reports suggested that the event was cancelled either for technical reasons<sup>42</sup> or to fears of "partner organisations and the community were [...], due to the reaction from the heightened level."<sup>43</sup> Despite this setback, "Proud to be Us!" returned in 2015, being officially organised with the support of the European Union (EU) to mark the International Day against Homophobia, Transphobia and Biphobia (IDAHOT).<sup>44</sup> More than a dozen local activists and diplomats from the USA, Australian, British and French embassies attended,<sup>45</sup> and the Lao National Television covered the event and aired an interview with LGBTIQ HRDs - reportedly, the first time that such content has been aired on Lao television.<sup>46</sup>

In 2016, IDAHOT was again marked in Laos through "Proud to be Us!", with the support of the EU.<sup>47</sup> The LGBTIQ HRDs who organised that event noted that security was a concern and that it was because the event was held in the EU compound that they felt safe.<sup>48</sup> A year later, in May 2017, IDAHOT was marked with the support of the Embassies of Australia, Canada, the USA, the EU, and the United Kingdom.<sup>49</sup>

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<sup>39</sup> "U.S. Embassy Supports Laos' First LGBT Pride Event", Embassy of the United States in Vientiane, Laos, 26 June 2012, available at [https://web.archive.org/web/20130217202251/https://laos.usembassy.gov/press\\_jun26p.html](https://web.archive.org/web/20130217202251/https://laos.usembassy.gov/press_jun26p.html) (last visited 20 July 2017).

<sup>40</sup> "U.S. Embassy Supports Laos' First LGBT Pride Event", Embassy of the United States in Vientiane, Laos, 26 June 2012.

<sup>41</sup> "Embassy pledges support for Laos' second annual Gay Pride event", British Embassy Vientiane in Laos, 17 May 2013, available at <https://www.gov.uk/government/world-location-news/embassy-pledges-support-for-laos-second-annual-gay-pride-event> (last visited 20 July 2017).

<sup>42</sup> "Celebrating IDAHOT for the first time: Insight into a milestone event", International Day Against Homophobia, Transphobia & Biphobia, no date, available at <http://dayagainsthomophobia.org/celebrating-idahot-for-the-first-time-insight-into-a-milestone-event> (last visited 10 October 2017).

<sup>43</sup> Anna Leach, "Fighting for the right to love - your #LGBTChange heroes", The Guardian, 14 February 2016, available at <https://www.theguardian.com/global-development-professionals-network/2016/feb/14/fighting-for-the-right-to-love-your-lgbtchange-heroes> (last visited 20 July 2017).

<sup>44</sup> Darren Wee, "Laos celebrates IDAHOT for the first time", Gay Star News, 5 June 2015, available at <https://www.gaystarnews.com/article/laos-celebrates-idahot-first-time050615/> (last visited 28 June 2017).

<sup>45</sup> Darren Wee, "Laos celebrates IDAHOT for the first time", Gay Star News, 5 June 2015.

<sup>46</sup> Lao NEWS on LNTV, "EU celebrates IDAHO in Vientiane. 20/5/2015", Youtube, 21 May 2015, available at <https://www.youtube.com/watch?v=DTbm1vn81Wk> (last visited 20 July 2017).

<sup>47</sup> Anan Bouapha & Anna Blue, "Proud to be us Laos", Guardian Witness, February 2016, available at <https://witness.theguardian.com/assignment/569e69bee4b06544a9da91da/1916631> (last visited 20 July 2017).

<sup>48</sup> "Celebrating IDAHOT for the first time: Insight into a milestone event", International Day Against Homophobia, Transphobia & Biphobia, no date.

<sup>49</sup> "Proud to be Us – Laos", Facebook Page, May 2017, available at [https://www.google.com/url?q=https://www.facebook.com/pg/proudtobeuslaos/photos/?tab%3Dalbum%26album\\_id%3D1368527536567317&sa=D&ust=1499142051167000&usq=AFQjCNExBDUJU-xKrs0aMP24slghrOwEw](https://www.google.com/url?q=https://www.facebook.com/pg/proudtobeuslaos/photos/?tab%3Dalbum%26album_id%3D1368527536567317&sa=D&ust=1499142051167000&usq=AFQjCNExBDUJU-xKrs0aMP24slghrOwEw) (last visited 20 July 2017).

## Right to Equality and Non-Discrimination

**Legal Situation:** While Laos does not currently have discriminatory laws in place based on SOGIESC identity,<sup>50</sup> it equally lacks specific laws protecting the LGBTIQ community.<sup>51</sup>

**HIV/AIDS Prevention:** Among men who have sex with men (**MSM**), the prevalence of Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (**HIV/AIDS**) has been exceptionally high, reportedly at a rate of 5.8% compared to 0.2% for the general population in 2007.<sup>52</sup> In addition to various CSO programs supporting MSM including those living with HIV/AIDS,<sup>53</sup> the Ministry of Health has undertaken public awareness campaigns to increase tolerance and understanding of HIV/AIDS<sup>54</sup> and has established a centre for HIV/AIDS and sexually transmitted infections (**STIs**).<sup>55</sup>

**Discrimination in Practice:** According to a 2016 US Department of State report, the LGBTIQ community in Laos faces certain discrimination in practice.<sup>56</sup> According to the US Department of State, LGBTIQ people face societal discrimination in terms of housing as well as employment, with LGBTIQ HRDs reporting that members of the LGBTIQ community would refrain from applying for government or top private-sector roles on the basis that "there was a tacit understanding that employers were unwilling to hire them."<sup>57</sup>

Both lesbians<sup>58</sup> and gay men<sup>59</sup> have been separately identified as members of the LGBTIQ facing particular social stigma and discrimination, including possible verbal and physical abuse by private citizens.<sup>60</sup> In addition, it is generally reported that there is widespread ignorance about the LGBTIQ community throughout Laos.<sup>61</sup>

## Conclusion

Since its first UPR cycle, Laos has made efforts to address some of the recommendations received by other delegations in relation to human rights training, freedom of expression, and other rights that affect HRDs if countries infringe upon them. However, Laos has not accepted

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<sup>50</sup> "Laos 2016 Human Rights Report", U.S. Department of State, 2016, p. 25, available at <https://www.state.gov/documents/organization/265560.pdf> (last visited 10 October 2017).

<sup>51</sup> "Laos: Freedom in the World 2016", Freedom House, 2016, available at <https://freedomhouse.org/report/freedom-world/2016/laos> (last visited 10 October 2017). See also Anna Leach, "Lao and proud: LGBT rights in Laos", Gay Star News, 9 July 2012, available at [https://www.gaystarnews.com/article/lao-and-proud-lgbt-rights-laos090712/#gs.U\\_SoE1M](https://www.gaystarnews.com/article/lao-and-proud-lgbt-rights-laos090712/#gs.U_SoE1M) (last visited 10 October 2017).

<sup>52</sup> Anna Leach, "Lao and proud: LGBT rights in Laos", Gay Star News, 9 July 2012.

<sup>53</sup> "Celebrating IDAHOT for the first time: Insight into a milestone event", International Day Against Homophobia, Transphobia & Biphobia, no date.

<sup>54</sup> "Laos 2016 Human Rights Report", U.S. Department of State, 2016, p. 26.

<sup>55</sup> Anna Leach, "Lao and proud: LGBT rights in Laos", Gay Star News, 9 July 2012.

<sup>56</sup> "Laos 2016 Human Rights Report", U.S. Department of State, 2016, p. 25.

<sup>57</sup> "Laos 2016 Human Rights Report", U.S. Department of State, 2016, pp. 25-26.

<sup>58</sup> "Laos 2016 Human Rights Report", U.S. Department of State, 2016, p. 26.

<sup>59</sup> Anna Leach, "Lao and proud: LGBT rights in Laos", Gay Star News, 9 July 2012.

<sup>60</sup> Anna Leach, "Lao and proud: LGBT rights in Laos", Gay Star News, 9 July 2012.

<sup>61</sup> "Celebrating IDAHOT for the first time: Insight into a milestone event", International Day Against Homophobia, Transphobia & Biphobia, no date. See also "Laos 2016 Human Rights Report", U.S. Department of State, 2016, p. 26.

all recommendations and could strive to strengthen protection of the freedoms of assembly and association in particular.

The current situation in Laos reflects this mixed response. While there have been a number of noteworthy advancements for Laos's LGBTIQ community, including ongoing annual Pride and IDAHOT celebrations and government health and communication programs focused on HIV/AIDS, LGBTIQ people continue to face discriminatory practices. There is also limited information available about the treatment of LGBTIQ HRDs, and a concerning broader context imposing stringent restrictions on the operations of HRDs and CSOs.<sup>62</sup> Taking into account the limited legal framework in Laos protecting the LGBTIQ community and their defenders, it is clear that both remain vulnerable.

## Recommendations

In the lead-up to the third UPR review of Laos in January/February 2020:

- CSOs should actively engage in monitoring the implementation of those recommendations Laos accepted during the first two UPR cycles so as to gather relevant data on the improvement of the human rights situation in the country and to report at the third UPR cycle.
- CSOs should focus on documenting and disseminating information on the situation and any specific violations and abuses endured by LGBTIQ people and their defenders so as to provide recommending states and the relevant UN mechanisms with solid evidence-based information.
- CSOs and recommending states should work collaboratively to develop UPR recommendations for Laos's third cycle that focus on strengthening legal protections for, eliminating discriminatory practices against, and encouraging greater visibility of, the LGBTIQ community and LGBTIQ HRDs.

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<sup>62</sup> "Laos: Freedom in the World 2017", Freedom House, 2017, available at <https://freedomhouse.org/report/freedom-world/2017/laos> (last visited 10 October 2017); "Laos: Freedom in the World 2016", Freedom House, 2016.

# Laos: LGBTIQ HRD Interview

Human Rights of LGBTIQ  
Communities and HRDs:  
Frontline Voices

## Anonymous\*

**\* Due to personal safety concerns, the human rights defender (HRD) featured in this interview has requested to remain anonymous.**

### **What have been the biggest challenges you've faced in advocating for LGBTIQ rights?**

The biggest challenge is the perception and stereotype of people towards LGBT people what is in the back of their mind is that they don't know LGBT, who they really are and so on. They only know the word 'gay'. When we try to advocate them, they seem to ignore, they are not interested in knowing this issue and the situation, so this is another thing we are working and advocating on.

We want people to see the importance of working on the rights, and especially LGBTIQ rights. It's essential because people think 'LGBT, you are gay, and we have human rights laws to cover you, and that's it.' The worst thing is, people also think LGBTIQ people is the disease carrier, which is completely not true.

So, there are many points we can work on and advocate about together with many partners and stakeholders. We would like to change their perception towards LGBT people in terms of their ability, capacity and

skills, as well as their contribution to the development work, but to do that it takes time and needs support from many partners altogether, especially development agencies and local government partners. In terms of government, they are supporting and can be more supportive, and we just still need more supports.

Moreover, LGBTIQ community would very much like to work alongside with them and contribute to the work of the national, due to we believe that working together we will be able to step further concretely.

### **Have you ever felt personally at risk because of your work?**

I personally feel it a bit, actually, but just a bit. However I know what I'm doing and we try to do it safe, plus we are not doing anything against anyone. We are trying to blend in, understand what we can and cannot do, understand the situation, as well as the country context and our local culture and traditional.

### **What have been the most successful strategies or techniques you've used to create positive change?**

I would say it's about knowing and understanding the local context and trying to blend in and deal with it, because I think if we clearly know and understand the local context, we know which way to go, and how we'll be able to deal with LGBT topics and

support them. Due to, if we don't know or understand clearly about the local context, we may do something wrong and it may affect to the community. We can try to apply some best practices from neighbouring countries to our activities in Laos with the support from local partners and with the hope to get the support from government partners. Another thing is to know where and what stage that LGBTI community stand at the moment and where we can go from there together, and with other partners, as well as reaching out to the existing supporters/donors who are keen to assisting the community on this topic.

**How have things changed over the past few years regarding LGBTIQ rights and being an HRD?**

Regarding LGBT rights, what I can see changing is more opportunities and supports from the international donors, such as the embassies, some local organisation partners to support the LGBT community to conduct the activities and collaboration. Compared to previous years, there was a level of difficulties to reach them, as well as community themselves not that hardly able to make a move in terms of their own community but since we started something back in few years ago, we see positive change.

There are a lot of things to advocate on and cooperation especially from the grassroots to the national level. However, what we are having at the moment is better than previous year, and I have hope and see that there will be another positive change in each year, step by step, even though it may takes

longer or slower than other neighbouring countries, but it will be surely happens.

**Is there anything in particular that has happened that has been difficult for you as an HRD?**

Not only as a HRD, but also LGBT people in general, we are concerned about safety of LGBTIQ community since there was a disappearance of one of the development worker leaders in Laos back in many years ago. However, I have been trying to get people understand that what we have been doing is promoting our visibility and our ability and capacity to contribute to the society and development work.

**Do you think the Universal Periodic Review (UPR) recommendations have an impact on Laos?**

Yes, it's had an impact at some points or levels, but not that much. I personally expect to see more from UPR in terms of assisting influencing the policymakers/making level to take LGBTIQ topic in an account and more, as well as to include LGBTIQ community in the decision-making level more. I believe that UPR can help making an impact for my country in terms of human rights. However, but what they do with the recommendations is good, we can rely on that where necessary but I'm expecting to see more from UPR, due to its literally not making a huge impact at the moment that it was supposed to be.

### **Does civil society know how to use the UPR recommendations and comments for advocacy in Laos?**

Some people, levels or organisations, especially whom had a chance to meet or train with the UPR information team, because they organised training for them. So they will be able to apply that or recommendations to their work and make positive change. However, I personally think not that efficient that much.

The LGBT advocates use those recommendations where necessary, which is good. But not that sure if it will work out well, and we still expect to see more engagement from UPR and LGBTIQ together, plus who were trained on this, should have been able to contribute or advocate more to other HRD or LGBTI advocates, or on the grassroots level at least.

### **What gives you hope when looking to the future of LGBTIQ rights in Laos?**

What gives me hope would be the local LGBT advocates and community ourselves. Because we now are getting to know more LGBTIQ advocates, who would like to join this ride together with us and aim the same things. Plus, the existing opportunity in terms of support from international donors and local organisations including civil society organisations (**CSOs**), as well as government partners, moreover, I can see more to come in the future, due to I believe that the more we are trying to do at the moment, the more supports and things would come and happen in the future. These gives me hope to see the progress and positive vibes of LGBTIQ people in Laos.

# Malaysia: Country Profile

## Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

### Introduction

#### UPR Cycles

**First UPR Cycle:** 11 February 2009

**Second UPR Cycle:** 24 October 2013

**Third UPR Cycle:** October/November 2018

Issues concerning Malaysia's lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) community were raised during both its first and second Universal Periodic Review (**UPR**) cycles. Concern was also expressed by States at both cycles over the ill-treatment of human

rights defenders (**HRDs**). As this Country Profile reports, however, recommendations regarding the decriminalisation of same-sex sexual relations and the abolition of the death penalty and corporal punishment have consistently failed to enjoy Malaysia's support.

Malaysia is reportedly one of the few Association of Southeast Asian Nation (**ASEAN**) states that refused to include a clause protecting LGBTIQ rights<sup>1</sup> in the ASEAN Human Rights Declaration (**AHRD**).<sup>2</sup> Indeed, as the Country Profile outlines, LGBTIQ people and their defenders in Malaysia still require greater protection against ill-treatment. Throughout Malaysia's two UPR cycles, the LGBTIQ community and HRDs faced challenges to their right to participate in the cultural life of the community, their freedoms of assembly, opinion, and expression; and their right to equality, non-discrimination, and privacy.

"We have seen an increase in the attention paid to the recommendations that Malaysia receives, which has to do with the engagement and work LGBT and other human rights defenders and activists put in. But on a different level, I think we should question the efficacy of these tools. [...] Over the years we have seen Malaysia's human rights violation visibly [...] but we see Malaysia continuing have these [leadership] roles in the UN, as it is perceived as a moderate Muslim country."

**Thilaga Sulathireh,  
Co-Founder, Justice for Sisters**

<sup>1</sup> "Sexual orientation and gender identity issues excluded from draft ASEAN human rights declaration", Fridae, 14 September 2012, available at [https://queeramnesty.ch/docs/Fridae\\_20120914\\_SOGI\\_excluded\\_from\\_draft\\_ASEAN\\_human\\_rights\\_declaration.pdf](https://queeramnesty.ch/docs/Fridae_20120914_SOGI_excluded_from_draft_ASEAN_human_rights_declaration.pdf) (last visited 11 July 2017).

<sup>2</sup> "ASEAN Human Rights Declaration and the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration (AHRD)", ASEAN, July 2013, available at [http://www.asean.org/storage/images/ASEAN\\_RTK\\_2014/6\\_AHRD\\_Booklet.pdf](http://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf) (last visited 11 July 2017).

In the lead-up to Malaysia's third UPR in October/November 2018 (and, in particular, the submission of stakeholder reports by 22 March 2018),<sup>3</sup> civil society organisations (**CSOs**) and recommending States have an opportunity to work towards developing improved UPR recommendations that focus on the universality and benefit to Malaysia of various proposed reforms.

## Past UPR Cycles for Malaysia

### First UPR Cycle (11 February 2009)

**National Report Filed:**<sup>4</sup> Malaysia's national report for the first UPR was published on 19 November 2008. It mentioned neither the LGBTIQ community nor HRDs. The report suggested, however, that the Malaysian government was committed to promoting and protecting human rights. For instance, it highlighted the ongoing work of the Human Rights Commission of Malaysia established in 1999<sup>5</sup> and noted that Malaysia's Federal Constitution protected the freedoms of speech, assembly, and association.<sup>6</sup>

**Stakeholders Submissions Made:**<sup>7</sup> The summary of the 11 stakeholders' submissions was published on 27 October 2008. Stakeholders explicitly mentioned both issues affecting the LGBTIQ community and HRDs. They expressed concerns over laws allowing for discrimination against the LGBTIQ community.<sup>8</sup> They reported that freedom of expression was violated through regulating sexuality in a way that specifically targeted women and transgender people.<sup>9</sup> Stakeholders also expressed concern about HRDs, restrictions to their freedom of expression, and restrictions imposed on their congregating, organising and freely protesting.<sup>10</sup>

#### First UPR Cycle for Malaysia: Recommendations Received

In its first UPR, held in February 2009, Malaysia received the following recommendations which directly relate to the LGBTIQ community and LGBTIQ HRDs:

<sup>3</sup> OHCHR, "3rd UPR cycle: contributions and participation of 'other stakeholders' in the UPR", 22 May 2017, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx> (last visited 21 August 2017).

<sup>4</sup> *National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1: Malaysia*, U.N. Doc. A/HRC/WG.6/4/MYS/1/Rev.1, 19 November 2008, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MY/A\\_HRC\\_WG6\\_4\\_MYS\\_1\\_E.PDF](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MY/A_HRC_WG6_4_MYS_1_E.PDF) (last visited 1 July 2017).

<sup>5</sup> First UPR cycle: *National Report*, Malaysia, paras. 12-15.

<sup>6</sup> First UPR cycle: *National Report*, Malaysia, para. 9.

<sup>7</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1: Malaysia*, U.N. Doc. A/HRC/WG.6/4/MYS/3, 27 October 2008, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MY/A\\_HRC\\_WG6\\_4\\_MYS\\_3\\_E.PDF](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MY/A_HRC_WG6_4_MYS_3_E.PDF) (last visited 1 July 2017).

<sup>8</sup> First UPR cycle: *Stakeholders' Summary*, Malaysia, paras. 13, 30.

<sup>9</sup> First UPR cycle: *Stakeholders' Summary*, Malaysia, para. 37.

<sup>10</sup> First UPR cycle: *Stakeholders' Summary*, Malaysia, para. 38.



- Respect the human rights of all individuals, including homosexuals, by de-penalising homosexuality and the elimination from the Penal Code of standards which allow for discrimination against people on the grounds of their sexual orientation (France).
- Reduce the number of crimes for which the death penalty may be handed down, including non-violent crimes, and consider abolishing the death penalty (France).
- Abolish the death penalty as the final form of punishment and establish a moratorium on the use of the death penalty (Israel, Djibouti, Italy, Lithuania).
- Continue exercising its sovereign right of adopting national legislation and the penal code, including the application of the death penalty (Egypt, Sudan).
- Continue to focus efforts on ensuring full protection of human rights for all vulnerable groups, one such avenue is through the ongoing rigorous capacity-building programmes that Malaysia has initiated in this area, particularly for public officers (Thailand).
- Continue with positive efforts to promote economic, social and cultural rights (Cuba).
- Review, amend and adopt various laws to enable its citizens to exercise fully the right to freedom of opinion and expression, including freedom of the press and freedom of information (Canada, France).
- Review its Police Act to enhance its citizens' ability to exercise the right to peaceful assembly (Canada).
- Continue to promote human rights in accordance with the values of the country (Oman) and according to international commitments and religious and cultural specificities (Kuwait).

**Source:** *Report of the Working Group on the Universal Periodic Review: Malaysia*, U.N. Doc. A/HRC/11/30, 5 October 2009, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/163/60/PDF/G0916360.pdf?OpenElement> (last visited 1 July 2017).

**Comments Received; Response to Recommendations:** During the UPR Interactive Dialogue, Malaysia affirmed its criminalisation of homosexual sexual activity and noted that "such sexual conduct was not only against the tenets of Islam, but also the other major religions in Malaysia such as Christianity and Buddhism."<sup>11</sup> Malaysia also added that "it was clear that the Act did not make cross-dressing an offence."<sup>12</sup>

On the death penalty, Malaysia did not support any of the three recommendations it received on the death penalty, instead confirming its view that the death penalty was legal.<sup>13</sup> Malaysia

<sup>11</sup> First UPR cycle: *Report of the Working Group*, Malaysia, paras. 48, 76(b), 88(a), 105. Malaysia held that Islam was its official religion despite Malaysia officially being a secular state.

<sup>12</sup> First UPR cycle: *Report of the Working Group*, Malaysia, para. 48.

<sup>13</sup> First UPR cycle: *Report of the Working Group*, Malaysia, paras. 21(b), 76(b), 83(b), 88(c), 93(b)(iii), 94(b), 105.

further presented its view that it was exercising its national sovereignty by enforcing its Penal Code, including its provision on the death penalty.<sup>14</sup>

The recommendation concerning freedom of expression similarly failed to enjoy Malaysia's support.<sup>15</sup> As Malaysia explained:

the Government believes that existing legislation in Malaysia provides sufficient guarantees to ensure that the right to freedom of opinion and expression may be exercised fully [and] also believes that preservation of national unity, harmony and security are of paramount importance.<sup>16</sup>

Malaysia offered the same explanation in its decision not to support recommendations about freedom of assembly. However, Malaysia did accept recommendations on human rights education and protection, including for vulnerable groups.<sup>17</sup>

## Second UPR Cycle (24 October 2013)

**National Report Filed:**<sup>18</sup> Malaysia's national report for the second UPR was published on 6 August 2013. The report did not mention either Malaysia's LGBTIQ community or HRDs. The report suggested that Malaysia has progressed since its last UPR in terms of its promotion and protection of the right to peaceful assembly by enacting new legislation.<sup>19</sup> The report also explained that, during the period under review, the Human Rights Commission of Malaysia had undertaken inquiries on issues such as freedoms of expression, opinion, and assembly.<sup>20</sup>

**Stakeholders Submissions Made:**<sup>21</sup> The summary of the 28 stakeholders' submissions was published on 25 July 2013. As with the first UPR, stakeholders explicitly mentioned issues affecting the LGBTIQ community and HRDs. Stakeholders expressed concern over the widespread discrimination and harassment of individuals of diverse sexuality and gender by both State and non-state actors who felt supported by the existence of discriminatory laws targeting the LGBTIQ community.<sup>22</sup> Stakeholders highlighted the example of the Seksualiti

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<sup>14</sup> First UPR cycle: *Report of the Working Group*, Malaysia, para. 104.15; *Report of the Working Group on the Universal Periodic Review: Malaysia, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/11/30/Add.1, 3 June 2009, para. 10, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/137/38/PDF/G0913738.pdf?OpenElement> (last visited 1 July 2017).

<sup>15</sup> First UPR cycle: *Report of the Working Group*, Malaysia, paras. 106.15-106.16.

<sup>16</sup> First UPR cycle: *Report of the Working Group, Addendum*, Malaysia, para. 15.

<sup>17</sup> First UPR cycle: *Report of the Working Group*, Malaysia, paras. 104.8-104.10, 104.43.

<sup>18</sup> *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Malaysia*, U.N. Doc. A/HRC/WG.6/17/MYS/1, 6 August 2013, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/161/32/PDF/G1316132.pdf?OpenElement> (last visited 1 July 2017).

<sup>19</sup> Second UPR cycle: *National Report*, Malaysia, para. 94.

<sup>20</sup> Second UPR cycle: *National Report*, Malaysia, para. 87.

<sup>21</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Malaysia*, U.N. Doc. A/HRC/WG.6/17/MYS/3, 25 July 2013, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/158/70/PDF/G1315870.pdf?OpenElement> (last visited 1 July 2017).

<sup>22</sup> Second UPR cycle: *Stakeholders' Summary*, Malaysia, paras. 9, 26, 50.

Merdeka festival, which the police had banned from being held on the grounds that it was a threat to national security and public order.<sup>23</sup>

Stakeholders reported that HRDs had received hate mail and death threats, and had their offices attacked by police and unknown individuals as a tool of intimidation.<sup>24</sup> Stakeholders further noted that although the Human Rights Commission of Malaysia showed more willingness to deal with sexual orientation and gender identity rights, it was regrettable that the Commission's annual reports to parliament were not debated by parliament's members.<sup>25</sup>

### **Second UPR Cycle for Malaysia: Recommendations Received**

In its second UPR, held in October 2013, Malaysia received the following recommendations which directly relate to the LGBTIQ community and LGBTIQ HRDs:

- Take legislative and practical steps to guarantee that LGBTI persons can enjoy all human rights without discrimination (Germany, Argentina, Chile).
- Introduce legislation that will decriminalise sexual relations between consenting adults of the same sex (Croatia, France, The Netherlands, Canada).
- Enact legislation prohibiting violence based on sexual orientation (Canada).
- Prohibit explicitly corporal punishment in all settings, including in the home and as a sentence of the courts (Liechtenstein).
- Establish a moratorium on the death penalty (Cyprus, Belgium, Mexico, Spain, Norway, Montenegro, Chile).
- Take effective measures to ensure the full realisation of the right to freedom of expression, by among other things, reviewing certain legislation (Poland, Denmark).
- Take steps to strengthen and promote the rights of journalists and bloggers to freely exercise their right to freedom of expression (Austria).
- Continue its efforts to further enhance the exercise and enjoyment of the rights to freedom of peaceful assembly in the country (Indonesia, Russian Federation) and amend the Peaceful Assembly Act (Switzerland, Canada).

**Source:** *Report of the Working Group on the Universal Periodic Review: Malaysia*, U.N. Doc. A/HRC/25/10, 4 December 2013, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/188/48/PDF/G1318848.pdf?OpenElement> (last visited 1 July 2017).

**Comments Received; Response to Recommendations:** During the Interactive Dialogue, Malaysia explained that matters involving LGBTIQ people “would be handled carefully and consistent with cultural traditions, religious doctrine, societal norms, and domestic laws and

<sup>23</sup> Second UPR cycle: *Stakeholders' Summary*, Malaysia, para. 62.

<sup>24</sup> Second UPR cycle: *Stakeholders' Summary*, Malaysia, para. 39.

<sup>25</sup> Second UPR cycle: *Stakeholders' Summary*, Malaysia, para. 28.

regulations.”<sup>26</sup> Belgium expressed its concern about “the ill-treatment of human rights defenders, including those defending lesbian, gay, bisexual and transgender (LGBT) rights.”<sup>27</sup> Nevertheless, recommendations to protect LGBTIQ groups from discrimination did not enjoy Malaysia's support.

Further recommendations that did not enjoy Malaysia's support were those which aimed to decriminalise same-sex sexual relations, abolish the death penalty, prohibit corporal punishment,<sup>28</sup> and strengthen protection of freedoms of expression and assembly.<sup>29</sup> However, Malaysia did support in full recommendations from Indonesia and the Russian Federation to continue enhancing and encouraging freedom of assembly,<sup>30</sup> and accepted in principle the recommendation from Austria that it take steps to strengthen and promote the rights of journalists and bloggers to freely exercise their right to freedom of expression.<sup>31</sup>

## Situation of the LGBTIQ Community and its HRDs in Malaysia

### Freedom of Association and Assembly, and the Right to Freely Participate in the Cultural Life of the Community

**Restrictions on LGBTIQ Events:** In 2011, the Malaysian police banned the LGBTIQ cultural festival *Seksualiti Merdeka*. The festival, created in 2008 by a coalition of non-governmental organisations (**NGOs**), would have featured workshops, forums, art, dance, talks, music performances, and film screenings.<sup>32</sup> The police ban of the 2011 followed efforts by *Utusan Malaysia* — a news organisation owned by ruling political party United Malays National Organisation — to sensationalise and criticise the festival and the LGBTIQ community.<sup>33</sup> For example, the prominent LGBTIQ HRD and former Bar Council president Ambiga Sreenevasan was accused of promoting “free sex” and “unnatural” sex.<sup>34</sup>

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<sup>26</sup> Second UPR cycle: *Report of the Working Group*, Malaysia, para. 9.

<sup>27</sup> Second UPR cycle: *Report of the Working Group*, Malaysia, para. 49.

<sup>28</sup> Second UPR cycle: *Report of the Working Group*, Malaysia, paras. 146.99-146.100, 146.103-146.104, 146.117-146.124, 146.145-146.146; *Report of the Working Group on the Universal Periodic Review: Malaysia, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/25/10/Add.1, 4 March 2014, para. 9, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MYindex.aspx> (last visited 11 July 2017).

<sup>29</sup> Second UPR cycle: *Report of the Working Group*, Malaysia, paras. 146.157-146.159, 146.166-146.168; Second UPR cycle: *Report of the Working Group, Addendum*, Malaysia, para. 9.

<sup>30</sup> Second UPR cycle: *Report of the Working Group*, Malaysia, paras. 146.163-146.164; Second UPR cycle: *Report of the Working Group, Addendum*, Malaysia, para. 6.

<sup>31</sup> Second UPR cycle: *Report of the Working Group*, Malaysia, para. 146.160; Second UPR cycle: *Report of the Working Group, Addendum*, Malaysia, para. 7.

<sup>32</sup> Phil Robertson & Graeme Reid, “Malaysia: Appeal to Prime Minister Najib to Lift the Ban on the *Seksualiti Merdeka* Festival”, Human Rights Watch, 8 November 2011, available at <https://www.hrw.org/news/2011/11/08/malaysia-appeal-prime-minister-najib-lift-ban-seksualiti-merdeka-festival> (last visited 11 July 2017).

<sup>33</sup> *Suara Rakyat Malaysia*, “Malaysia Human Rights Report 2011: Civil and Political Rights”, SUARAM, 2012, p. 64, available at <http://www.suaram.net/wordpress/wp-content/uploads/2015/09/HR2011-lowres.pdf> (last visited 11 July 2017).

<sup>34</sup> *Suara Rakyat Malaysia*, “Malaysia Human Rights Report 2011”, SUARAM, 2012, p. 64; Phil Robertson & Graeme Reid, “Malaysia: Appeal to Prime Minister Najib to Lift the Ban on the *Seksualiti Merdeka* Festival”, Human Rights Watch, 8 November 2011.

Over 50 people were later brought in for questioning under laws against "causing disharmony"<sup>35</sup> and permitting intervention into events outside the public space.<sup>36</sup> Deputy Inspector-General of Police Khalid Abu Bakar defended this approach, stating that "anything to do with the rights of lesbians and homosexuals is out [of the question], no way."<sup>37</sup>

On 1 March 2012, Judge Rohana Yusuf of the High Court of Malaysia upheld the 2011 police ban on Seksualiti Merdeka, affirming that the police had the power under the Police Act to stop the event for investigative purposes.<sup>38</sup> The festival has not been held since the 2011 ban.

**Threats and Violence Against LGBTIQ HRDs:** It was reported that the organisers of the 2011 Seksualiti Merdeka festival were harassed and threatened with violence via text messages and social media.<sup>39</sup> It appeared that no investigations were undertaken into such threats.

Moreover, on 10 September 2015, two men brutally attacked the prominent LGBTIQ HRD Nisha Ayub with iron bars outside her apartment building, resulting in her hospitalisation<sup>40</sup> and preventing her from travelling to Geneva to advocate for transgender rights before the United Nations (UN) Human Rights Council (HRC).<sup>41</sup> In a press statement on the attack, Lawyers for Liberty expressed their concern over the attack, noting that such attacks were "clearly crimes of intimidation and malice against human rights activists, not ordinary petty crimes, as they specifically target those who are vocal and well-known for advocating their causes."<sup>42</sup> Lawyers for Liberty called on the police to protect LGBTIQ HRDs following the attack.

**Banning of LGBTIQ NGOs:** On 8 January 2014, the Malaysian Home Ministry declared the Coalition of Malaysian NGOs in the UPR Process (COMANGO) to be illegal on the basis that it "deviates from the Islamic faith" since it supported LGBTIQ rights<sup>43</sup> and that its member

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<sup>35</sup> Section 298A of the Penal Code: This section is entitled "Causing, etc., disharmony, disunity, or feelings of enmity, hatred or ill will, or prejudicing, etc., the maintenance of harmony or unity, on grounds of religion."

<sup>36</sup> Section 27A(1)(c) of the Police Act: This section is entitled "Power to stop certain activities which take place other than in a public space."

<sup>37</sup> Suara Rakyat Malaysia, "Malaysia Human Rights Report 2011", SUARAM, 2012, p. 64.

<sup>38</sup> "Malaysian Court Upholds Ban on Sexuality Rights Festival, 'Seksualiti Merdeka'", Out Right Action International, 9 March 2012, available at <https://www.outrightinternational.org/content/malaysian-court-upholds-ban-sexuality-rights-festival-seksualiti-merdeka> (last visited 11 July 2017).

<sup>39</sup> "Malaysia: Reverse Ban on Sexual Diversity Festival", Human Rights Watch, 8 November 2011, available at <https://www.hrw.org/news/2011/11/08/malaysia-reverse-ban-sexual-diversity-festival> (last visited 11 July 2017).

<sup>40</sup> "World Report 2016: Events of 2015", Human Rights Watch, 2016, p. 394, available at [https://www.hrw.org/sites/default/files/world\\_report\\_download/wr2016\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf) (last visited 11 July 2017).

<sup>41</sup> Anna Brown, "Tackling violence against LGBTI People and Defenders", International Service for Human Rights, 6 October 2015, available at <http://www.ishr.ch/news/tackling-violence-against-lgbti-people-and-defenders#sthash.wGRIBnYG.xLNk8ppK.dpuf> (last visited 11 July 2017).

<sup>42</sup> "Press Statement: Keep activists safe, apprehend assailants immediately", Lawyers for Liberty, 15 September 2015, available at <http://www.lawyersforliberty.org/lfl-keep-activists-safe-apprehend-assailants-immediately/> (last visited 11 July 2017).

<sup>43</sup> "Malaysia must reverse ban against leading human rights coalition", International Service for Human Rights, 12 January 2014, available at <http://www.ishr.ch/news/malaysia-must-reverse-ban-against-leading-human-rights-coalition> (last visited 11 July 2017).

organisations were not legally registered.<sup>44</sup> It is of specific relevance to the UPR to note that the action Malaysia COMANGO was outlawed after submitting a UPR stakeholder report on Malaysia in March 2013.<sup>45</sup> The declaration of the coalition's illegality can therefore be interpreted as an attempt by the Malaysian government to stifle NGOs critical of its performance, especially those who support the LGBTIQ community.

**Arrest of LGBTIQ HRDs:** Most recently, it was reported that on 3 April 2016, the Malaysian Federal Territories Islamic Department (**JAWI**) raided a private transgender fundraising event, with the media present at the raid.<sup>46</sup> Siti Kasim, a lawyer and HRD present at the event, questioned whether the raid was conducted under a proper warrant, was, arrested, and is now bringing a lawsuit against the JAWI over the conduct of the raid.<sup>47</sup> On 23 June 2017, she pleaded not guilty to the charge of obstructing a public servant from conducting the raid, a charge which carries a possible 2 year prison sentence and a fine.<sup>48</sup>

Finally, it is also notable that on 1 July 2017, Razali Ismail, the chairperson of Malaysia's Human Rights Commission, denounced the charges against Siti Kasim. As he stressed, "the Commission cautions that where lawyers are unable to defend their clients for fear of arrest, criminal charges or intimidation, they cannot properly defend people facing violations of their human rights."<sup>49</sup>

The imposition of restrictions on the holding of LGBTIQ cultural events; unchecked threats by non-state actors against the LGBTIQ community and its HRDs; and government-led restrictions against LGBTIQ HRDs undermine Malaysia's commitment during the second UPR towards encouraging freedom of assembly within the State.

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<sup>44</sup> "Malaysia must reverse ban against leading human rights coalition", International Service for Human Rights, 12 January 2014.

<sup>45</sup> "Malaysia must reverse ban against leading human rights coalition", International Service for Human Rights, 12 January 2014.

<sup>46</sup> "Malaysia: End the targeting of the transgender community", Urgent Action, Amnesty International Canada, 2017, available at [http://takeaction.amnesty.ca/ea-action/action?ea.client.id=1770&ea.campaign.id=73454&utm\\_medium=email&utm\\_source=engagingnetworks&utm\\_campaign=LGBT\\_Malaysia\\_transgender&utm\\_content=UAN+-+Malaysia+Siti+Kisam+-+June30+2017+-+expanded+UAN&ea.url.id=971829](http://takeaction.amnesty.ca/ea-action/action?ea.client.id=1770&ea.campaign.id=73454&utm_medium=email&utm_source=engagingnetworks&utm_campaign=LGBT_Malaysia_transgender&utm_content=UAN+-+Malaysia+Siti+Kisam+-+June30+2017+-+expanded+UAN&ea.url.id=971829) (last visited 20 July 2017); Seksualiti Merdeka, "Transgender Malaysians are our heroes; stop persecuting our heroes", Malay Mail Online, 7 April 2016, available at <http://www.themalaymailonline.com/what-you-think/article/transgender-malaysians-are-our-heroes-stop-persecuting-our-heroes-seksualiti> (last visited 20 July 2017).

<sup>47</sup> Ho Kit Yen, "Siti Kasim to pursue lawsuit against Jawi", FMT, 23 June 2017, available at <http://www.freemalaysiatoday.com/category/nation/2017/06/23/siti-kasim-to-pursue-lawsuit-against-jawi/> (last visited 20 July 2017); "Malaysia: End the Targeting of the Transgender Community", Urgent Action, Amnesty International Canada, 2017.

<sup>48</sup> Annabelle Lee, "Siti Kasim charged for obstruction over Jawi transgender raid", Malaysiakini, 23 June 2017, available at <https://www.malaysiakini.com/news/386551> (last visited 20 July 2017); "Malaysia: End the Targeting of the Transgender Community", Urgent Action, Amnesty International Canada, 2017.

<sup>49</sup> "Suhakam: Charging lawyer Siti Kasim against UN principles", Malaysiakini, 1 July 2017, available at <https://www.malaysiakini.com/news/387106> (last visited 20 July 2017).

## Freedom of Opinion and Expression

**Treatment of Bloggers:** On 29 December 2010, Azwan Ismail, a 32-year-old Muslim Malay citizen, uploaded a video on YouTube in response to a Seksualiti Merdeka campaign<sup>50</sup> in which he acknowledged his homosexuality and encouraged others to be confident in their diverse sexualities.<sup>51</sup> In response, he received online death threats, while the Mufti in the Malaysian state of Perak publicly condemned the video and declared that Ismail had offended "Islam in general."<sup>52</sup> In addition, a minister in the Prime Minister's department called on religious authorities to monitor the activities of LGBTIQ groups.<sup>53</sup>

It was also reported that the Islamic Development Department of Malaysia (**JAKIM**) announced its intent to take action against Ismail over the video,<sup>54</sup> leading the Joint Action Group for Gender Equality (**JAG**) NGO to release a press statement supporting Azwan Ismail and arguing that such government intervention would encourage violence towards the LGBTIQ community.<sup>55</sup> Ultimately, the JAKIM did not intervene, although Seksualiti Merdeka nevertheless took down the video in response to the threats of violence.<sup>56</sup>

The treatment of Azwan Ismail, including the reactions of the Malaysian government, stand at odds with Malaysia's in-principle support of a recommendation it received during the second UPR to take steps to strengthen and promote the rights of journalists and bloggers to freely exercise their right to freedom of expression.

**Anti-LGBTIQ Events:** A number of events have been held against the LGBTIQ community without police intervention. These include a 4 November 2011 public demonstration hosted by the organisation Perkasa which called for a stop to LGBTIQ culture "to the last drop of blood."<sup>57</sup> Similarly, a 21 April 2012 anti-LGBTIQ rally organised by the NGO Jaringan Melayu Malaysia attracted between 1,000-3,000 attendees.<sup>58</sup> It featured speeches on intolerance towards sexual minorities within Malaysia and NGOs' expression of discontent at tentative calls for

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<sup>50</sup> "Human Rights Reports for 2010: Malaysia", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 4 August 2011, p. 46, available at <https://www.state.gov/documents/organization/160468.pdf> (last visited 11 July 2017).

<sup>51</sup> JAG, "Press statement : Stand up against hatred and threats against LGBT", Sisters in Islam, 2010, available at <http://www.sistersinislam.org.my/comment.php?comment.news.790> (last visited 11 July 2017).

<sup>52</sup> "Human Rights Reports for 2010: Malaysia", U.S. Department of State, 4 August 2011, p. 46.

<sup>53</sup> "Islamic department powerless to act against gay Malay man: Malaysian official", Fridae, 30 December 2010, available at <http://www.fridae.asia/gay-news/2010/12/31/10539-islamic-department-powerless-to-act-against-gay-malay-man-malaysian-official> (last visited 20 July 2017).

<sup>54</sup> JAG, "Press statement: Stand up against hatred and threats against LGBT", Sisters in Islam, 2010.

<sup>55</sup> JAG, "Press statement: Stand up against hatred and threats against LGBT", Sisters in Islam, 2010.

<sup>56</sup> "Islamic department powerless to act against gay Malay man: Malaysian official", Fridae, 30 December 2010.

<sup>57</sup> Phil Robertson & Graeme Reid, "Malaysia: Appeal to Prime Minister Najib to Lift the Ban on the Seksualiti Merdeka Festival", Human Rights Watch, 8 November 2011.

<sup>58</sup> Anna Leach, "Thousands scream for hate at anti-LGBT rally in Malaysia", Gay Star News, 23 April 2012, available at <http://www.gaystarnews.com/article/thousands-scream-hate-anti-lgbt-rally-malaysia230412/#gs.W=kBdFl> (last visited 11 July 2017).

LGBTIQ rights in Malaysia.<sup>59</sup> Posters of LGBTIQ HRD Ambiga Sreenevasan were burned and slogans including "Reject Ambiga, Reject LGBT" were shouted.<sup>60</sup>

## Right to Equality and Non-Discrimination

**Constitutional Challenge:** In 2014, the award-winning transgender HRD Nisha Ayub<sup>61</sup> and her rights group Justice for Sisters drew attention for assisting three Muslim transgender women in a successful constitutional challenge of *sharia* law in the province of Negri Sembilan. That law had outlawed men from dressing as women.<sup>62</sup> On 8 October 2015, however, the Federal Court overturned that decision and affirmed the constitutionality of the law which prevents men from dressing as women,<sup>63</sup> in a setback for the right of trans people in Malaysia to enjoy equality and non-discrimination.

**Government Position:** In June 2017, the JAKIM announced that it had "never agreed to any form of discrimination or bullying against members of the lesbian, gay, bisexual and transgender (LGBT) community."<sup>64</sup> While the JAKIM Director-General Tan Sri Othman Mustapha still spoke of homosexual activities in a negative light, he claimed that acts "such as labelling, condemning, insulting and demeaning the community were extreme and overboard" and stressed that "If for Jakim, any behaviour that is against the law should be dealt with by the law or by preaching to the wrongdoer."<sup>65</sup>

**Discriminatory Violence:** Despite Malaysia's official position opposing discrimination against LGBTIQ people, they still can face discrimination and violence. In February 2017, Sameera Krishnan, a transwoman, was brutally murdered by three people in the street.<sup>66</sup> In June 2017, an 18-year old named T Nhaveen, whose classmates thought he was gay but who had no

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<sup>59</sup> Anna Leach, "Thousands scream for hate at anti-LGBT rally in Malaysia", Gay Star News, 23 April 2012.

<sup>60</sup> Suara Rakyat Malaysia, "Malaysia Human Rights Report 2012: Civil and Political Rights", SUARAM, 2013, p. 84, available at <http://www.suaram.net/wordpress/wp-content/uploads/2015/09/HR2012-lowres.pdf> (last visited 11 July 2017).

<sup>61</sup> On 15 April 2015, transwoman and activist Nisha Ayub was awarded Hero of the Year at the second Asia LGBT Milestone Awards: Zurairi Ar, "Malaysian transgender activist crowned 'hero' at regional LGBT awards", Malay Mail Online, 16 April 2015, available at <http://www.themalaymailonline.com/malaysia/article/malaysian-transgender-activist-crowned-hero-at-regional-lgbt-awards> (last visited 11 July 2017). In 2016, Nisha Ayub was the first transwoman to be awarded the United States Secretary of State's International Women of Courage Award 2016: "Transgender's fight hailed", The Star Online, 31 March 2016, available at <http://www.thestar.com.my/news/nation/2016/03/31/transgenders-fight-hailed-nishas-advocacy-work-recognised-wins-her-prestigious-us-award/> (last visited 11 July 2017).

<sup>62</sup> Zurairi Ar, "Malaysian transgender activist crowned 'hero' at regional LGBT awards", Malay Mail Online, 16 April 2015.

<sup>63</sup> Human Rights Watch, "World Report 2015: Events of 2014", 2015, p. 370 available at [https://www.hrw.org/sites/default/files/wr2015\\_web.pdf](https://www.hrw.org/sites/default/files/wr2015_web.pdf) (last visited 11 July 2017); "Malaysia: Court Ruling Sets Back Transgender Rights", Human Rights Watch, 8 October 2015, available at <https://www.hrw.org/news/2015/10/08/malaysia-court-ruling-sets-back-transgender-rights> (last visited 11 July 2017).

<sup>64</sup> "Jakim disagrees with discrimination and bullying of LGBT community", The Star Online, 19 June 2017, available at <http://www.thestar.com.my/news/nation/2017/06/19/jakim-disagrees-with-discrimination-and-bullying-of-lgbt-community/> (last visited 11 July 2017).

<sup>65</sup> "Jakim disagrees with discrimination and bullying of LGBT community", The Star Online, 19 June 2017.

<sup>66</sup> Hidir Redouan, "CCTV recording sheds light into transgender's brutal murder: Pahang police", New Straits Times, 27 February 2017, available at <https://www.nst.com.my/news/2017/02/215862/cctv-recording-sheds-light-transgenders-brutal-murder-pahang-police> (last visited 11 July 2017).



known self-identification as such, was brutally attacked by eight people.<sup>67</sup> Five of his assailants were later arrested for "rioting",<sup>68</sup> while Nhaveen ultimately died of his injuries.<sup>69</sup>

**Rehabilitation of LGBTIQ People:** In Malaysia, the existence of State-sponsored "videos, seminars, publications, manuals, apps, and action plans centred on the theme of rehabilitation: that LGBTIQ persons can and should be cured or corrected"<sup>70</sup> are an additional concern regarding recognition and non-discrimination for LGBTIQ people. For example, in June 2017, the government held a video contest in which there was a category for submissions related to preventing and curing homosexuality. The category was then removed after backlash from activists.<sup>71</sup>

Moreover, programs such as "the Mukhayyam Programme [... which] targets trans women, and offers information on spirituality and Islam, HIV [Human Immunodeficiency Virus] and microcredit assistance with the objective of helping trans women return to the right path"<sup>72</sup> also demonstrate the type of discriminatory treatment LGBTIQ people can face in Malaysia. The government's active support for such programs stands in opposition to Malaysia's acceptance in its first UPR of recommendations on human rights education and protection, including for vulnerable groups.

## Right to Privacy

In addition to attempts to quash the leading HRD Ambiga Sreenevasan's freedom of expression, she was harassed and intimidated on various occasions throughout 2012. The Malaysia Small and Medium Entrepreneurs Alliance established a burger stall outside of her personal residence to facilitate harassment of Sreenevasan, with a video showing protesters shouting aggressively at her house.<sup>73</sup> In response to questions about the burger stall, the

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<sup>67</sup> Joe Morgan, "Teen targeted by anti-gay bullies 'brain dead' after being beaten, raped with blunt object, and burnt", Gay Star News, 13 June 2017, available at <https://www.gaystarnews.com/article/teen-targeted-anti-gay-bullying-brain-dead-beaten-raped-burnt/> (last visited 11 July 2017).

<sup>68</sup> Joe Morgan, "Teen targeted by anti-gay bullies 'brain dead' after being beaten, raped with blunt object, and burnt", Gay Star News, 13 June 2017, available at <https://www.gaystarnews.com/article/teen-targeted-anti-gay-bullying-brain-dead-beaten-raped-burnt/> (last visited 11 July 2017).

<sup>69</sup> Meka Beresford, "Teen killed in vicious homophobic attack where he was beaten, burnt and raped for hours", Pink News, 17 June 2017, available at <http://www.pinknews.co.uk/2017/06/17/teen-killed-in-vicious-homophobic-attack-where-he-was-beaten-burnt-and-raped-for-hours/2/?emm=true> (last visited 11 July 2017).

<sup>70</sup> Zhan Chiam, Statement by the International Lesbian and Gay Association, 35th Human Rights Council Session, 15 June 2017, p. 1, available at [http://ilga.org/downloads/HRC35\\_Item4\\_General\\_Debate.pdf](http://ilga.org/downloads/HRC35_Item4_General_Debate.pdf) (last visited 11 July 2017).

<sup>71</sup> "Malaysia drops gay 'prevention' category from video competition", BBC, 8 June 2017, available at <http://www.bbc.com/news/world-asia-40198581> (last visited 11 July 2017).

<sup>72</sup> Zhan Chiam, Statement by the International Lesbian and Gay Association, 35th Human Rights Council Session, 15 June 2017, p. 2.

<sup>73</sup> Suara Rakyat Malaysia, "Malaysia Human Rights Report 2012", SUARAM, 2013, p. 85; "Ambiga fork-tongued for criticising burger protest, says Berita Harian", Malaysia Today, 12 May 2012, available at <http://www.malaysia-today.net/ambiga-fork-tongued-for-criticising-burger-protest-says-berita-harian/> (last visited 11 July 2017).

deputy police chief Khalid Abu Bakar alleged that it was not an invasion of privacy and was merely the use of public space.<sup>74</sup>

Continuing the string of harassment, intimidation and invasion of privacy and her home, an estimated "ten people from the Malay Armed Forces Veterans Association (**PVTM**) did 'bottom exercises' in front of Ambiga's house", with the exercises involving the men "leaning over and shaking their bottoms in the direction of Ambiga's house."<sup>75</sup> The President of PVTM, Mohd Ali Baharom, claimed that Sreenevasan was an enemy of the nation and that the veterans had the right to protest against any enemy smearing the nation's name.<sup>76</sup> It was not until this final incident that the police and Kuala Lumpur City Hall enforcement officers began to police the house to prevent such protests.<sup>77</sup>

## Conclusion

Since its first UPR cycle, Malaysia has cited its cultural context as a key constraint to its conservative approach to LGBTIQ issues. It has also stressed the importance of national unity, harmony, and security. Malaysia has only supported a few UPR recommendations concerning its LGBTIQ community and HRDs, including in relation to education and protection initiatives vis-à-vis vulnerable groups, enhancing and encouraging freedom of assembly, and strengthening and promoting freedom of expression. Recommendations to decriminalise same-sex sexual relations and abolish capital and corporal punishment have consistently failed to enjoy Malaysia's support.

The current situation facing Malaysia's LGBTIQ community and HRDs reflects this ambiguous official position. Some government actors have exhibited a permissive approach while others have remained conservative. This has left the LGBTIQ community and HRDs vulnerable. LGBTIQ cultural events have been prohibited and legal challenges to laws outlawing cross-dressing overruled. A prominent lawyer supporting the transgender community has been arrested for intervening in a raid on a private, peaceful transgender event. Anti-LGBTIQ events, meanwhile, have continued unchecked, and the government has offered delayed or muted responses to instances of the LGBTIQ community and their HRDs being targeted.

Finally, it is noteworthy in the context of this report to note that the government outlawed a civil society umbrella group after it had submitted a UPR stakeholder report on Malaysia in March 2013, while the transgender activist Nisha Ayub was prevented from travelling to

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<sup>74</sup> Suara Rakyat Malaysia, "Malaysia Human Rights Report 2012", SUARAM, 2013, p. 85.

<sup>75</sup> Suara Rakyat Malaysia, "Malaysia Human Rights Report 2012", SUARAM, 2013, p. 85.

<sup>76</sup> Suara Rakyat Malaysia, "Malaysia Human Rights Report 2012", SUARAM, 2013, p. 85; "Malaysia: Bersih co-chair Ambiga Sreenevasan threatened", Asian Human Rights Defenders, 19 August 2012, available at <https://asianhrds.forum-asia.org/?events-malaysia-bersih-co-chair-ambiga-sreenevasan-threatened> (last visited 11 July 2017).

<sup>77</sup> Suara Rakyat Malaysia, "Malaysia Human Rights Report 2012", SUARAM, 2013, p. 85.

advocate transgender rights before the UN HRC in 2015 after she was violently attacked. It is clear, therefore, that both Malaysia's LGBTIQ community and their defenders remain at risk.

## **Recommendations**

In the lead-up to the third UPR review of Malaysia in October/November 2018:

- CSOs should actively engage in monitoring the implementation of those recommendations Malaysia accepted during the first two UPR cycles so as to gather relevant data on the improvement of the human rights situation in the country and to report at the third UPR cycle.
- CSOs should continue documenting violations and abuses endured by LGBTIQ people and their defenders so as to provide recommending states and the relevant UN mechanisms with solid evidence-based information.
- CSOs and recommending states should emphasise the universality and benefit to Malaysia of reforms such as the abolition of capital and corporal punishment, and the decriminalisation of consensual same-sex sexual activity.
- CSOs and recommending states should work collaboratively to develop UPR recommendations for the third cycle that emphasise the universality and benefit to Malaysia of such reforms.

# Malaysia: LGBTIQ HRD Interview

## Human Rights of LGBTIQ Communities and HRDs: Frontline Voices



### **Thilaga Sulathireh, Co-Founder, Justice for Sisters**

#### **How did you become involved in lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ) rights work?**

Me being queer, myself, and being part of the community has a lot to do with my involvement with LGBTIQ rights work. Also, having seen homophobia and transphobia, I decided to organise with my friends against homophobic and transphobic comments. I was also already involved in women's rights and gender discourse, so that made it really easy. I guess before that, I was doing work in HIV/AIDS [Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome], so that made it easier for me to be exposed to gay men, trans people, so it

all just gelled, and I progressed into doing what I do now.

#### **What have been the biggest challenges you've faced in advocating for LGBTIQ rights?**

In Malaysia, there are many challenges. One of them is the laws. The laws in Malaysia are definitely a big challenge, because there is the civil law applicable to all people, and then there are additional State Sharia laws that are only applicable to Muslim persons.

There is the Penal Code 377 in the civil law, and the State *sharia* laws criminalise sexual conduct between men, sexual relations between women, male person posing as a woman or female person posing as a man. In Sharia laws, you have all these laws based on sexual orientation that directly criminalise LGBT people. In civil law, the Penal Code 377 is a colonial legacy. However, it is gender neutral and prohibits consensual sex between adults regardless of gender. All these laws have affected and have a chilling effect on the human rights of LGBT people.

On top of that, in Malaysia, LGBTIQ persons and activists face a lot of restrictions regarding freedom of assembly, association and expression. Seksualiti Merdeka in 2011

was banned<sup>1</sup> because we were seen as a threat to national security. Basically, Seksualiti Merdeka was a festival that was organised to educate people, to host workshops and performances, but it was largely an educational workshop, panel, sort of festival. We had been running for four years, and then we were banned.

Since then a number of events organised by LGBT persons or events on SOGIESC [sexual orientation, gender identity, gender expression, sexual characteristics] have been cancelled due to protest or raided by State agencies. This includes cancellation of the Penang Pink Dot "due to concerns over the personal security and safety of the organisers and participants" following protest by groups like PERKASA and ABIM in 2014; cancellation of a beauty pageant by trans women in 2015 after threats of arrest, and calls for ban of use, promotion and integration of Iban culture in transgender beauty pageants by the Mayor and the Dayak Miri Association; a charity dinner organised by trans women at a hotel was raided by Federal Territory Islamic Department in 2016; cancellation of an event in a local private university in conjunction with IDAHOT [International Day against Homophobia, Transphobia and Biphobia] following protests by some groups in 2017.

At the root of it is the increasing involvement or role of religion (Islam) in state administration and public policy, which has a big impact in terms of regulation of bodies,

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<sup>1</sup> "Malaysia: LGBT festival banned after complaints off extremist groups", Asia Human Rights Defenders, 21 June 2012, available at <http://www.themalaymailonline.com/malaysia/article/seksualiti-merdeka-organisers-hope-to-outlast-prejudicial-law> (last visited 4 July 2017); Zurairi AR, "Seksualiti Merdeka

bodily rights and integrity and autonomy. This has also led to an increase of policing of personal or private lives, and the lack of separation of State and religion. Plus, there is also a lack of appreciation for plurality and diversity, including the state's understanding of Islam. There is a sense of hegemony of one idea and one way of thinking.

### **How would you overcome this challenge or what have you done to overcome this challenge?**

Building coalitions and solidarity with other groups or other people (women's group, indigenous people, groups that work on detention and arbitrary arrest). We have also produced content and conducted awareness raising activities.

### **Is there anything in particular that has happened that has been difficult for you as a human rights defender (HRD)?**

Seeing the impact and the lack of freedoms in Malaysia; we see a lot of migration — a lot of LGBT people want to leave Malaysia. A lot of LGBT people are seeking asylum or migrating because there is a lack of freedoms which restricts access to employment, education, housing, etc. That can be quite challenging because then you lose a lot of people and you can't build a sustainable movement.

One thing that is challenging is the lack of separation of powers and check and balance in Malaysia. As a result, many repressive

organisers hope to outlast 'prejudicial' law", Malay Mail Online, 23 August 2013, available at <https://asianhrds.forum-asia.org/?events-malaysia-lgbt-festival-banned-after-complaints-off-extremist-groups> (last visited 4 July 2017).

laws have been used against human rights defenders to silence dissent and freedom of expression, speech, assembly and association.

The system itself doesn't protect people, and that makes it very challenging. There is a failure at multiple levels in regard to protection and access to redress.

### **Have you ever been in danger in relation to your activity as a HRD?**

No. I have never endured physical attacks, I have been very fortunate. I have only experienced digital security issues. Collectively, we have experienced different things. In 2015, one of our colleagues was physically attacked and as a group we were really impacted. All these things have an evident impact on the ways we do activism. At Justice for Sisters we assist people who have been arrested and we also deal with many cases of secondary trauma.

### **Does your government do enough to protect LGBTIQ rights?**

The government does not protect LGBT people and instead it takes an active role in perpetuating and endorsing violence,

harassment, intimidation, stigma and discrimination towards LGBT people, and that needs to stop.

A lot of public funds go into rehabilitation or efforts to correct LGBT people. This includes the Mukhayyam camp by the state Islamic departments, which is basically a spiritual camp, that target transgender women, who are Muslim. The camp also provides information on HIV and Islam, microcredit assistance to some participants. This is the problem when you have religion involved in government and this relationship exists. This programme is packaged as a spiritual camp and organised by the religious institution in Malaysia and is funded by them too.

The camp is also designed to stop the spread of HIV/AIDS, as they think if they stop people being gay or trans, that will stop the spread of HIV/AIDS.

JAKIM [Islamic Development Department of Malaysia], in collaboration with the state Islamic departments and non-governmental organisations [NGOs], have released action plans,<sup>2</sup> videos,<sup>3</sup> seminars,<sup>4</sup> publications,<sup>5</sup>

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<sup>2</sup> Kemaskini Terakhir, "Bicara Usrati Jannati & Majlis Pelancaran Portal Piswi, Pelan Tindakan Keluarga Sakinah Dan Pelan Tindakan Menangani Gejala Sosial Perlakuan LGBT", Jabatam Kemujam Islam Malaysia, 2 August 2016, available at <https://islam.gov.my/berita-semasa/34-bahagian-keluarga-sosial-komuniti/629-bicara-usrati-jannati-majlis-pelancaran-portal-piswi-pelan-tindakan-keluarga-sakinah-dan-pelan-tindakan-menangani-gejala-sosial-perlakuan-lgbt> (last visited 4 July 2017).

<sup>3</sup> Yayasan Ihtimam Malaysia, "Ghlg LGBT: Apa Yang Anda Perlu Tahu(1)", YouTube, 14 November 2016, available at [https://www.youtube.com/watch?v=2vfOUGW\\_0NA](https://www.youtube.com/watch?v=2vfOUGW_0NA) (last visited 4 July 2017).

<sup>4</sup> "Golongan LGBT boleh diubah", BH Online, 25 December 2016, available at <https://www.bharian.com.my/node/227009> (last visited 4 July 2017);

"Seminar Pemahaman Ummah; LGBT: Apa Yang Anda Tahu?", 31 October 2016, available at <http://puspanita.selangor.gov.my/wp-content/uploads/2016/11/SURAT-JEMPUTAN-SEMINAR-PEMAHAMAN-UMMAH-LGBT.pdf> (last visited 4 July 2017).

<sup>5</sup> FMT Reporters, "Valentine's Day anti-gay flyers ours, says Jakim", FMT News, 18 February 2015, available at <http://www.freemalaysiatoday.com/category/nation/2015/02/18/valentines-day-anti-gay-flyers-ours-says-jakim/> (last visited 4 July 2017).

sermons,<sup>6</sup> an app,<sup>7</sup> all of which promote the notion that LGBT persons can be corrected or rehabilitated or cured, sexual orientation and gender identity of LGBT persons can be suppressed through spiritual and motivational guidance, or marriage.

These are problematic strategies and it uses a lot of public funds. If the government stopped funding these kinds of camps and programmes, I think it would reduce some harm and have an impact towards the lives of LGBT people.

**Do you think the Universal Periodic Review (UPR) recommendations have an impact on Malaysia? Do you think the recommendations lead governments to change policies to strengthen human rights protections?**

I think the UPR is interesting because in the first cycle we received four recommendations, all of which were rejected. The second cycle had an increase of recommendations. Again, all of the recommendations were noted or rejected and the government's position was that "matters involving lesbian, gay, bisexual and transgender persons and adherents of other schools of Islamic thought would be handled carefully and consistent with cultural traditions, religious doctrine and societal norms, and domestic laws and regulations."<sup>8</sup>

<sup>6</sup> "Paradise closed to crossdressers and transgenders, Jawi says in sermon", Malay Mail Online, 6 May 2016, available at <http://www.themalaymailonline.com/malaysia/article/paradise-closed-to-crossdressers-and-transgenders-jawi-says-in-sermon> (last visited 4 July 2017).

<sup>7</sup> Hijrah Diri, "Homoseksualiti", App on Google Play, 13 July 2016, available at <https://play.google.com/>

So the government took a very cultural relativist position, which is very common in Southeast Asia, and especially in Malaysia. It is a flawed argument because gender diversity and sexual diversity have always existed in Southeast Asia and Malaysia.

We have seen an increase in the attention paid to the recommendations that Malaysia receives, which has to do with the engagement and work LGBT and other human rights defenders and activists put in.

But on a different level, I think we should question the efficacy of these tools. Malaysia has been on the Human Rights Council, sitting twice on the Council, and it is now on the UN Security Council sitting as President. Over the years we have seen Malaysia's human rights violation visibly, and there are problematic corruption cases affecting the lives of the people, but we see Malaysia continuing have these roles in the UN, as it is perceived as a moderate Muslim country.

**Does civil society know how to use the UPR recommendations and comments for advocacy in Malaysia? Do you think the UPR is an effective tool for human rights advocacy?**

The UPR is not legally binding, so Malaysia doesn't care about a lot of the international human rights treaties. The UPR is the lowest of all – it is really up to the country whether they take on these recommendations.

[store/apps/details?id=com.app\\_hijrahhaqq.layout&hl=en](https://play.google.com/store/apps/details?id=com.app_hijrahhaqq.layout&hl=en) (last visited 4 July 2017).

<sup>8</sup> "Criminalisation of Homosexuality", Human Dignity Trust, 2014, available at [http://www.humandignitytrust.org/uploaded/Map/Commonwealth\\_Country\\_Reports/Malaysia.pdf](http://www.humandignitytrust.org/uploaded/Map/Commonwealth_Country_Reports/Malaysia.pdf) (last visited 4 July 2017).

Malaysia is more inclined to accede to things that are broad, not specific, things that do not have a timeline. So in terms of analysis of the UPRs, this is what we see. Malaysia is more inclined to adopt recommendations about people with disabilities, children, poverty, rather than LGBT issues or issues affecting women.

COMANGO, the coalition of NGOs working on UPR,<sup>9</sup> was banned during the second cycle of the UPR due to the issues we highlighted in our reports such as violations of freedom of religion, discrimination against LGBTI people and gender inequality.

So far, Malaysia has only ratified three international human rights treaties — CEDAW [the Convention on the Elimination of All Forms of Discrimination against Women], CRC [the Convention on the Rights

of the Child], CRPD [the Convention on the Rights of Persons with Disabilities].

### **What gives you hope when looking to the future of LGBTIQ rights in Malaysia?**

I think people are inspiring in Malaysia. Although there is so much going on, people are always looking for things to do, and how to challenge emerging issue in creative ways. We constantly hear LGBT people being beaten, terrible stories of torture, harassment, intimidation, lack of acceptance by State or non-state actors. For example, in March 2017, Sameera Krishnan, a trans woman, was brutally murdered and mutilated;<sup>10</sup> this sparked a public outcry<sup>11</sup> to a point that some media changed the language they used. It's important we address all of these things.

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<sup>9</sup> "COMANGO", Facebook Page, available at <https://www.facebook.com/COMANGO/> (last visited 4 July 2017).

<sup>10</sup> "Justice for Sameera – Ensure thorough investigation & hold perpetrators accountable", Justice for Sisters, 3 March 2017, available at <https://justiceforsisters.wordpress.com/2017/03/03/justice-for-sameera-ensure-thorough->

[investigation-hold-perpetrators-accountable/](https://www.facebook.com/COMANGO/) (last visited 4 July 2017).

<sup>11</sup> Ong Han Sean, Wani Muthiah, & Danial Albakri, "Transgender found dead, mutilated", The Star Online, 24 February 2017, available at <http://www.thestar.com.my/news/nation/2017/02/24/transgender-found-dead-mutilated-relatives-confused-and-shocked-by-brutal-slaying/> (last visited 4 July 2017).



# Myanmar: Country Profile

## Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

### Introduction

#### UPR Cycles

**First UPR Cycle:** 27 January 2011

**Second UPR Cycle:** 6 November 2015

**Third UPR Cycle:** October/November 2020

Issues concerning the lesbian, gay, bisexual, transsexual, intersex, and queer (**LGBTIQ**) community and human rights defenders (**HRDs**) of the Republic of the Union of Myanmar (**Myanmar**) were raised during both its first and second Universal Periodic Review (**UPR**) cycles.

While Myanmar stated during its first UPR that it was working with the United Nations (**UN**) Human Rights Council (**HRC**) and the Office of the High Commissioner for Human Rights (**OHCHR**) to create more human rights oversight, a wide range of recommendations to strengthen protections for LGBTIQ persons and HRDs have consistently failed to enjoy Myanmar's support. These include recommendations regarding the abolition of the death penalty, decriminalisation of same-sex sexual relations, discrimination, and freedoms of assembly, association and expression.

As set out in this Country Profile, the current situation facing the LGBTIQ community and their defenders in Myanmar reflects Myanmar's mixed response to relevant UPR recommendations. Notable progress has been made since Myanmar's first UPR cycle vis-à-vis the visibility of the LGBTIQ community in Myanmar and to decrease media censorship and increase press freedom in Myanmar. However, discrimination against LGBTIQ people and the targeting of HRDs still occurs with impunity.

In the lead up to Myanmar's third UPR cycle in October/November 2020, which will be the first under Myanmar's recently-elected civilian-led government, recommending States and civil society organisations (**CSOs**) have the opportunity to develop improved UPR recommendations that aim to provide more protections for Myanmar's LGBTIQ community and HRDs.

"LGBT rights are now raised from a human rights and gender perspective [...] [T]he perception towards LGBT, I would not say changing as a whole country, but especially the Yangon community and city community is really changing. There is respect towards LGBT, because there is a lot of visibility."

**Hla Myat Tun,**  
**Program Director, Colors Rainbow**

## Past UPR Cycles for Myanmar

### First UPR Cycle (27 January 2011)

**National Report Filed:**<sup>1</sup> Myanmar's national report for the first UPR was published on 10 November 2010. The report did not mention either the LGBTIQ community or HRDs in general. It did, however, suggest that Myanmar was committed to increasing the number of workshops conducted on human rights issues in cooperation with the UN HRC and OHCHR.<sup>2</sup> The report also stated that legal provisions in effect in Myanmar protected against discrimination of any kind<sup>3</sup> and guaranteed the right to peaceful assembly and freedom of association.<sup>4</sup>

**Stakeholders Submissions Made:**<sup>5</sup> The summary of the 24 stakeholders' submissions was published on 18 October 2010. Without explicitly mentioning LGBTIQ HRDs, stakeholders expressed concern about the lack of freedom of expression and information;<sup>6</sup> the existence of legal provisions allowing for the arrest and imprisonment of writers, journalists, and activists for solely exercising their right to freedom of expression;<sup>7</sup> and legal provisions restricting the independence and functioning of CSOs.<sup>8</sup>

#### First UPR Cycle for Myanmar: Recommendations Received

In its first UPR, held in January 2011, Myanmar received a number of recommendations directly relevant to HRDs — though not explicitly referring to those working with the LGBTIQ community:

- Take immediate steps to end the persecution of HRDs (Austria).
- Investigate and punish all cases of intimidation, harassment, persecution, torture and forced disappearances, especially against HRDs (Uruguay).
- Abolish death penalty (Greece, Belgium, Italy).
- Immediately and unconditionally release all HRDs (Norway) and those imprisoned for peacefully exercising their rights to freedom of expression, association and assembly (United Kingdom).

<sup>1</sup> National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Myanmar, U.N. Doc A/HRC/WG.6/10/MMR/1, 10 November 2010, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/169/86/PDF/G1016986.pdf?OpenElement> (last visited 1 July 2017).

<sup>2</sup> First UPR cycle: *National Report*, Myanmar, para. 132.

<sup>3</sup> First UPR cycle: *National Report*, Myanmar, para. 37.

<sup>4</sup> First UPR cycle: *National Report*, Myanmar, para. 42.

<sup>5</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Myanmar*, U.N. Doc A/HRC/WG.6/10/MMR/3, 18 October 2010, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/169/86/PDF/G1016986.pdf?OpenElement> (last visited 1 July 2017).

<sup>6</sup> First UPR cycle: *Stakeholders' Summary*, Myanmar, para. 44.

<sup>7</sup> First UPR cycle: *Stakeholders' Summary*, Myanmar, para. 45.

<sup>8</sup> First UPR cycle: *Stakeholders' Summary*, Myanmar, para. 50.

- Take steps to review domestic laws with a view to guaranteeing the right to freedom of expression, association and assembly (Indonesia).
- Remove all restrictions on freedom of expression, association and assembly in law and in practice (Norway, Canada, France).

**Source:** *Report of the Working Group on the Universal Periodic Review: Myanmar*, U.N. Doc A/HRC/17/9, 24 March 2011, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/123/72/PDF/G1112372.pdf?OpenElement> (last visited 1 July 2017).

**Comments Received; Response to Recommendations:** Myanmar noted without accepting the recommendation<sup>9</sup> about the abolition of death penalty.<sup>10</sup> It explained that "although the death penalty has not yet been abolished, Myanmar has never carried out the death penalty since 1988. The Myanmar practice is in line with the international law."<sup>11</sup>

During the UPR Interactive Dialogue, various countries expressed concerned about a number of alleged human rights violations in Myanmar.<sup>12</sup> Myanmar acknowledged the importance of this issue, detailing how "since 2006, the Government had issued a public notice in the press for complaints against human rights violations to the ministries concerned."<sup>13</sup> It also accepted the recommendation to increase access to human rights education and training, especially for its military and law enforcement officers.<sup>14</sup> Nevertheless, every recommendation concerning the protection of the HRDs and following investigations of their persecution failed to enjoy Myanmar's support.<sup>15</sup>

During the dialogue, there was also discussion of the state of fundamental freedoms in Myanmar.<sup>16</sup> However, while Myanmar accepted the recommendation to review domestic laws to offer better protection of the freedoms of expression and assembly,<sup>17</sup> it chose not to support

<sup>9</sup> This is standard diplomatic language commonly used by States under review to declare that they do not accept a given recommendation.

<sup>10</sup> First UPR cycle: *National Report*, Myanmar, paras. 106.9, 106.63-106.37.

<sup>11</sup> *Report of the Working Group on the Universal Periodic Review: Myanmar, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/17/9/Add.1, 27 May 2011, para. 9, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MM/A\\_HRC\\_17\\_9\\_Add.1\\_Myanmar\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MM/A_HRC_17_9_Add.1_Myanmar_E.pdf) (last visited 1 July 2017).

<sup>12</sup> First UPR cycle: *National Report*, Myanmar, paras. 26, 59, 66, 72, 83.

<sup>13</sup> First UPR cycle: *National Report*, Myanmar, para. 88.

<sup>14</sup> First UPR cycle: *National Report*, Myanmar, para. 104.9.

<sup>15</sup> First UPR cycle: *National Report*, Myanmar, paras. 107.30, 107.56, 107.66.

<sup>16</sup> First UPR cycle: *National Report*, Myanmar, paras. 35, 40, 64, 66, 82, 85.

<sup>17</sup> First UPR cycle: *National Report*, Myanmar, para. 104.10.

recommendations which suggested the removal of restrictions on those freedoms from domestic laws.<sup>18</sup>

## Second UPR Cycle (6 November 2015)

**National Report Filed:**<sup>19</sup> Myanmar's report for the second UPR was published on 5 August 2015. It mentioned neither the LGBTIQ community nor HRDs in general. It did, however, report that Myanmar had made legislative reforms in order to improve the right to freedom of association. This included passing the 2012 Law Relating to the Rights of Peaceful Assembly and Peaceful Procession, enabling the right to stage demonstrations and gatherings, and the 2014 Registration of Association Law, allowing the formation of associations and providing for the free conduct of their activities.<sup>20</sup>

**Stakeholders Submissions Made:**<sup>21</sup> The summary of the 47 stakeholders' submissions was published on 28 August 2015. While LGBTIQ HRDs were not explicitly mentioned, for the first-time concerns were raised as to the laws criminalising consensual same-sex sexual conduct.<sup>22</sup>

### Second UPR Cycle for Myanmar: Recommendations Received

In its second UPR, held in November 2015, Myanmar received a number of recommendations in regards to HRDs:

- Release immediately and unconditionally all HRDs (Norway), ensure their protection (Chile), and create a safe environment for them to exercise their activities (Norway).
- Investigate and punish all cases of intimidation, harassment, persecution, torture and forced disappearances, especially against HRDs (Uruguay).
- Repeal Section 377 of the 1861 Penal Code to ensure the rights of women, religious minorities and the LGBTI community are protected (Australia) and to ensure that only non-consensual sexual relations between persons of the same sex are punishable (Spain).
- Abolish the death penalty (Panama, Greece, Holy See, Poland, Slovenia, Spain, Portugal, Sierra Leone, Switzerland, Luxembourg, France, Australia, Croatia, Lithuania).
- Increase efforts to counter incitement to violence and hate speech (New Zealand) targeting persons belonging to minorities (Algeria).

<sup>18</sup> First UPR cycle: *National Report*, Myanmar, paras. 107.8, 107.47, 107.65.

<sup>19</sup> *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Myanmar*, U.N. Doc A/HRC/WG.6/23/MMR/1, 5 August 2015, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/172/10/PDF/G1517210.pdf?OpenElement> (last visited 1 July 2017).

<sup>20</sup> Second UPR cycle: *National Report*, Myanmar, paras. 38, 40.

<sup>21</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Myanmar*, U.N. Doc A/HRC/WG.6/23/MMR/3, 28 August 2015, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/194/21/PDF/G1519421.pdf?OpenElement> (last visited 1 July 2017).

<sup>22</sup> Second UPR cycle: *Stakeholders' Summary*, Myanmar, para. 22.

- Ensure the effective protection of freedom of opinion and expression (New Zealand, Italy) including by reviewing and amending the 2014 News Media Law and Printing and Publication Law (Belgium, Ghana, Austria, Latvia).
- Ensure the effective protection of freedom of assembly by amending the 2011 Peaceful Gathering and Demonstration Law (Luxembourg, Sweden, France, Estonia).
- Continue the strengthening of the national human rights institutions and mechanisms (Nepal, Republic of Korea) and in particular the National Human Rights Commission (Egypt, Chile, Senegal, Portugal, Sierra Leone).

**Source:** *Report of the Working Group on the Universal Periodic Review: Myanmar*, U.N. Doc A/HRC/31/13, 23 December 2015, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement> (last visited 1 July 2017).

**Comments Received; Response to Recommendations:** During the UPR Interactive Dialogue, Myanmar indicated that it had not changed its approach to the death penalty, the legality of the Section 377 of the 1861 Penal Code, and the decriminalisation of same-sex sexual relations,<sup>23</sup> effectively noting without accepting recommendations in these regards.

Regarding the need to combat discrimination against vulnerable groups,<sup>24</sup> Myanmar stated that it “never exercis[e]d discriminatory practices based on race, religion or gender”<sup>25</sup> and that its Constitution prohibited all forms of discrimination.<sup>26</sup>

Myanmar accepted the recommendation to ensure the protection of HRDs and create a safe environment for them.<sup>27</sup> At the same time, however, it refused to release political prisoners, arguing that “there is no arbitrary arrest or detention in the country on political grounds.”<sup>28</sup> Similarly, while Myanmar accepted recommendations concerning the protection of the freedom of expression<sup>29</sup> — except those dealing with hate speech directed towards minority

<sup>23</sup> Second UPR cycle: *Report of the Working Group*, Myanmar, paras. 144.11, 144.56-144.64, 145.21, 145.29; *Report of the Working Group on the Universal Periodic Review: Myanmar, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/31/13/Add.1, 10 March 2016, para. 12, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/047/68/PDF/G1604768.pdf?OpenElement> (last visited 1 July 2017).

<sup>24</sup> Second UPR cycle: *Report of the Working Group*, Myanmar, para. 52.

<sup>25</sup> Second UPR cycle: *Report of the Working Group, Addendum*, Myanmar, para. 14.

<sup>26</sup> Second UPR cycle: *Report of the Working Group*, Myanmar, para. 71.

<sup>27</sup> Second UPR cycle: *Report of the Working Group, Addendum*, Myanmar, paras. 144.82-144.83.

<sup>28</sup> Second UPR cycle: *Report of the Working Group*, Myanmar, paras. 144.71, 145.23; Second UPR cycle: *Report of the Working Group, Addendum*, Myanmar, para. 13.

<sup>29</sup> Second UPR cycle: *Report of the Working Group*, Myanmar, paras. 143.62, 143.98-143.99, 144.80-144.81.

groups<sup>30</sup> — Myanmar did not support recommendations concerning the full enjoyment of freedom of assembly for citizens.<sup>31</sup>

Finally, recommendations concerning the strengthening of its National Human Rights Commission in accordance with Paris Principles were completely accepted by Myanmar.<sup>32</sup>

## Situation of the LGBTIQ Community and its HRDs in Myanmar

### Right to Equality and Non-Discrimination

**Criminalisation of Same-Sex Sexual Relations:** While the United Kingdom long ago repealed its laws criminalising same-sex relationships, Myanmar is among 17 remaining former British colonies to continue to apply them.<sup>33</sup> Section 377 of the Penal Code of Myanmar,<sup>34</sup> an inheritance of the British colonial era that explicitly prohibits homosexuality, is rarely used by the police and judicial system. However, LGBTIQ community members regularly face arrest and prosecution under other sections of the Code,<sup>35</sup> such as Sections 290,<sup>36</sup> 292,<sup>37</sup> and 294.<sup>38</sup>

Other laws in Myanmar are used more commonly to respond to the same objective, such as the 1950 Emergency Provisions Act, which prohibits anything "affecting the morality of a group of people or the general public."<sup>39</sup> Likewise, the 1945 Police Act authorises the police to take into custody "any person found between sunset and sunrise having his face covered or otherwise disguised, who is unable to give a satisfactory account himself."<sup>40</sup>

**Intimidation and Targeting of LGBTIQ Persons and HRDs:** According to the Asian Human Rights Commission, such legal provisions facilitate the targeting, intimidation, and arrest of LGBTIQ individuals and HRDs.<sup>41</sup> For instance, a study published in 2015, for which 25 members of the LGBTIQ community were interviewed, revealed that law enforcement officials regularly verbally harass, physically assault, threaten, and request bribes from LGBTIQ community

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<sup>30</sup> Second UPR cycle: *Report of the Working Group*, Myanmar, paras. 144.51, 145.31-145.32; Second UPR cycle: *Report of the Working Group, Addendum*, Myanmar, para. 14.

<sup>31</sup> Second UPR cycle: *Report of the Working Group*, Myanmar, paras. 145.33-145.36.

<sup>32</sup> Second UPR cycle: *Report of the Working Group*, Myanmar, paras. 143.42-143.48.

<sup>33</sup> "Facing 377: Discrimination and Human Rights Abuses Against Transgender Gay and Bisexual Men in Myanmar", *Colors Rainbow*, February 2015, p. 12, available at <http://equalitymyanmar.org/book/wp-content/uploads/2015/02/AnnualReport-rainbow.pdf> (last visited 25 July 2017).

<sup>34</sup> Myanmar, the Penal Code, India Act XLV. 1860, 1 May 1861, available at [http://www.burmalibrary.org/docs6/MYANMAR\\_PENAL\\_CODE-corr.1.pdf](http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf) (last visited 25 July 2017).

<sup>35</sup> "Facing 377: Discrimination and Human Rights Abuses Against Transgender Gay and Bisexual Men in Myanmar", *Colors Rainbow*, February 2015, p. 14.

<sup>36</sup> Section 290 of the Penal Code is entitled "Punishment for public nuisance in cases not otherwise provided for."

<sup>37</sup> Section 292 of the Penal Code is entitled "Sale, etc., of obscene books, etc."

<sup>38</sup> Section 294 of the Penal Code is entitled "Obscene acts and songs."

<sup>39</sup> "1950 Emergency Provisions Act", Act No. 17, 9 March 1950, Section 5(j), available at [http://www.burmalibrary.org/docs19/1950-Emergency\\_Provisions\\_Act-en.pdf](http://www.burmalibrary.org/docs19/1950-Emergency_Provisions_Act-en.pdf) (last visited 25 July 2017).

<sup>40</sup> "The Police Act", Burma Act VI 1945, 19 March 1946, Section 35(c), available at [http://www.burmalibrary.org/docs15/1945-Police\\_Act-en.pdf](http://www.burmalibrary.org/docs15/1945-Police_Act-en.pdf) (last visited 25 July 2017).

<sup>41</sup> "BURMA: Police Torture of Gay and Transgendered People", Asian Human Rights Commission, 21 July 2013, available at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-137-2013> (last visited 25 July 2017).

members.<sup>42</sup> In this regard, during Myanmar's second UPR, Lithuania encouraged Myanmar to put an end to the impunity of law enforcement officials alleged to have committed acts of torture and ill-treatment.<sup>43</sup> However, while Myanmar expressed full support for the recommendation,<sup>44</sup> concrete measures appear to be yet to be taken.

**Role of the National Human Rights Commission:** The Myanmar LGBT Rights Network stated in 2013 that it would file a complaint against the Mandalay police to the National Human Rights Commission — established in 2011<sup>45</sup> — following the police's alleged abuse and torture of gay men and transgender people while in detention.<sup>46</sup> However, the Commission initiated reforms in 2014 through the National Human Rights Commission Law which ensured that it did not effectively commence operations until 2015.<sup>47</sup> Since its inception, people have expressed concern over this mandate-limiting reform and the Commission's perceived lack of independence vis-à-vis the government.<sup>48</sup> This concern is consistent with various States' recommendations made during Myanmar's second UPR cycle, which Myanmar accepted, that Myanmar take steps to ensure the Commission exercised its mandate in compliance with the Paris Principles.<sup>49</sup>

## Freedom of Opinion and Expression

**Government Position:** In October 2011, the Director of the Press Scrutiny and Registration Division of the Burmese Ministry of Information, Tint Swe, publicly called for the abolition of media censorship in the State, stating that it was "not in harmony with democratic practices."<sup>50</sup> The year 2012 marked a turning point in terms of freedom of expression in Myanmar. The drafting of the Media Law and the Printing and Publishing Law, later enacted in 2014,<sup>51</sup> were seen as a positive attempt by the government to dismantle the State's censorship apparatus. Freedom House, noted that official censorship significantly decreased in 2012 and pre-

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<sup>42</sup> "Facing 377: Discrimination and Human Rights Abuses Against Transgender Gay and Bisexual Men in Myanmar", Colors Rainbow, February 2015, pp. 36-46.

<sup>43</sup> Second UPR cycle: *Report of the Working Group*, Myanmar, para. 143.81.

<sup>44</sup> Second UPR cycle: *Report of the Working Group*, Myanmar, para. 143.81.

<sup>45</sup> See "Myanmar National Human Rights Commission formed", The New Light of Myanmar, 6 September 2011, available at [http://www.burmalibrary.org/docs11/National\\_Human\\_Rights\\_Commission\\_Formed-NLM2011-09-06.pdf](http://www.burmalibrary.org/docs11/National_Human_Rights_Commission_Formed-NLM2011-09-06.pdf) (last visited 25 July 2017)

<sup>46</sup> "Myanmar LGBT Rights Network to Sue Police for Alleged Abuse of 12 Gay and Transgender Detainees", Fridae, 25 July 2013, available at <http://www.fridae.asia/gay-news/2013/07/25/12375.myanmar-lgbt-rights-network-to-sue-police-for-alleged-abuse-of-12-gay-and-transgender-detainees> (last visited 25 July 2017).

<sup>47</sup> "Republic of the Union of Myanmar President Office (Order No. 23/2014) on the Formation of Myanmar National Human Rights Commission", 24 September 2014, available at <http://www.myanmarpresidentoffice.gov.mm/2015en/?q=briefing-room/2014/09/25/id-4232> (last visited 25 July 2017).

<sup>48</sup> "All the President's Men", Burma Partnership and Equality Myanmar, 25 September 2014, pp. 26, 20, available at <http://www.burmapartnership.org/wp-content/uploads/2014/09/All-the-Presidents-Men1.pdf> (last visited 25 July 2017).

<sup>49</sup> Second UPR cycle: *Report of the Working Group*, Myanmar, paras. 143.42-143.48.

<sup>50</sup> Kyaw Kyaw, Khin Maung Nyane & Aun Parameswaran Ponnudurai, "Call to End Media Censorship", Radio Free Asia, 7 October 2011, available at <http://www.rfa.org/english/news/myanmar/censorship-10072011203136.html> (last visited 25 July 2017).

<sup>51</sup> News Media Law, Pyidaungsu Hluttaw Law No. 12/2014, 14 March 2014, unofficial translation, available at [http://www.burmalibrary.org/docs17/2014-Media\\_Law-en.pdf](http://www.burmalibrary.org/docs17/2014-Media_Law-en.pdf) (last visited 25 July 2017); Printing and Publishing Law, Pyidaungsu Hluttaw Law No. 13/2014, 14 March 2014, [Burmese only], available at [http://www.burmalibrary.org/docs18/2014-03-14-Printing\\_and\\_Publishing\\_Law-13-bu.pdf](http://www.burmalibrary.org/docs18/2014-03-14-Printing_and_Publishing_Law-13-bu.pdf) (last visited 25 July 2017).

publication censorship was eliminated.<sup>52</sup> Private newspapers were introduced in 2013 and journalists in exile started returning to the State.<sup>53</sup>

**Concerns Over Law Reforms:** In 2014, however, concern grew over the newly enacted Media Law and Printers and Publishing Law,<sup>54</sup> as illustrated by Belgium, Ghana, Austria, and Latvia in their recommendations to Myanmar during its second UPR cycle.<sup>55</sup> Some concerns include the establishment of a Media Council, whose members are appointed by the government of Myanmar to regulate the media, and also the government's powers to ban reporting that would be harmful to "community peace and tranquillity."<sup>56</sup> Such provisions could easily be used against any professional reporting on LGBTIQ issues, considering that the so-called "sodomy law" inherited from the British colonial era is still in effect in Myanmar.

**Hate Speech:** There are also regular reports of hate speech against the LGBTIQ community in Myanmar. One of the most recent examples was a statement made by Myint Kyu, the Border and Security Affairs Minister for the Mandalay region, in 2015:

The existence of gay men who assume they are women is unacceptable and therefore we are constantly taking action to have the gays detained at police stations, educate them, then hand them back to their parents.<sup>57</sup>

## **Freedom of Association and Assembly, and the Right to Freely Participate in the Cultural Life of the Community**

**IDAHOT and Pride Celebrations:** In 2012, Aung Myo Min, founder of the non-governmental organisation (NGO) Human Rights Education Institute of Burma (now known as Equality Myanmar) returned to Myanmar after 24 years in exile in Thailand. Equality Myanmar was the first NGO to address issues relevant to the LGBTIQ community through its Colours Rainbow program.<sup>58</sup> In the same year, Colors Rainbow oversaw the first International Day Against Homophobia (IDAHO) held openly in Myanmar and organised in five different communities. The event was attended by 1,355 people including activists, NGO workers, UN officials, and

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<sup>52</sup> "Freedom of the Press: Burma", Freedom House, 2013, available at <https://freedomhouse.org/report/freedom-press/2013/burma> (last visited 25 July 2017).

<sup>53</sup> "Freedom of the Press: Burma", Freedom House, 2014, available at <https://freedomhouse.org/report/freedom-press/2014/myanmar> (last visited 25 July 2017).

<sup>54</sup> "Freedom of the Press: Burma", Freedom House, 2015, available at <https://freedomhouse.org/report/freedom-press/2015/myanmar> (last visited 25 July 2017); "Myanmar: News Media Law - Legal Analysis", ARTICLE 19, 2014, available at <https://www.article19.org/data/files/medialibrary/37623/News-Media-Law-Myanmar-EN.pdf> (last visited 25 July 2017); "Myanmar: Printing and Publishing Law", ARTICLE 19, November 2014, available at <https://www.article19.org/data/files/medialibrary/37765/14-11-11-LA-print-publishing.pdf> (last visited 25 July 2017).

<sup>55</sup> Second UPR cycle: *Report of the Working Group*, Myanmar, paras. 144.80-144.81, 145.31-145.32.

<sup>56</sup> "Freedom of the Press: Burma", Freedom House, 2016, available at <https://freedomhouse.org/report/freedom-press/2016/myanmar> (last visited 25 July 2017).

<sup>57</sup> "Letter to Mandalay Chief Minister U Ye Myint, re: Harassment of LGBT People in Mandalay", Human Rights Watch, 2 September 2015, available at <https://www.hrw.org/news/2015/09/02/letter-mandalay-chief-minister-u-ye-myint> (last visited 25 July 2017).

<sup>58</sup> "Aung Myo Min", British Council, Burma, available at <http://www.britishcouncil.org.mm/life-stories/interviews/aung-myo-min> (last visited 25 July 2017).



media representatives, and received broad media coverage.<sup>59</sup> Later in 2012, events were also organised for the Transgender Day of Remembrance in seven communities.<sup>60</sup>

**Growing Visibility of the LGBTIQ Community:** These events, alongside the recent media reforms, led to a more visible LGBTIQ community and to the creation of other similar organisations in Myanmar. For example, the associations “YG” and “&PROUD”,<sup>61</sup> created in 2013 and 2014 respectively, regularly organise events for the LGBTIQ community in Yangon. As of 2014, the Myanmar LGBT network consisted of 35 CSOs.<sup>62</sup> In 2017, while Myanmar did not host a Pride event, some member of the LGBTIQ community hosted a day to dress nicely and pick up litter in their community as an act of public service while also aiming to gain some visibility.<sup>63</sup>

**Limited Law Reform:** Despite its pledge to guarantee the right to freedom of peaceful assembly, Myanmar neither repealed nor amended the Right to Peaceful Assembly and Peaceful Procession Act<sup>64</sup> — a law that authorities use to arbitrarily arrest and imprison HRDs. In fact, Myanmar even confirmed its unwillingness to repeal or amend the Law in its response to all four recommendations made on this issue.<sup>65</sup>

## Conclusion

Since its first UPR cycle, Myanmar has made a number of efforts to address some of the recommendations it has accepted. Most notably, Myanmar has introduced law reforms to reduce media censorship in the State. Since 2012, the LGBTIQ community in Myanmar has also been steadily growing in visibility, with a growing CSO community and increasingly frequent LGBTIQ-related community events.

At the same time, progress appears to have stalled in a number of other areas, despite Myanmar’s equal commitment in the UPR process to reforms in those areas. Although Myanmar committed itself in the first UPR to a review of freedom of assembly laws and in its second UPR to strengthening protection of HRDs, it still maintains a law in place that is used to arbitrarily arrest and imprison HRDs. Similarly, ill-treatment of LGBTIQ people by law enforcement officials, and anti-LGBTIQ hate speech, continues with impunity. In addition, questions have already been raised about the impartiality of the newly-operational National

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<sup>59</sup> “Annual Report”, Human Rights Education Institute of Burma, 2012, p. 14, available at <http://equalitymyanmar.org/book/wp-content/uploads/2015/03/Annual-Report-2012.pdf> (last visited 25 July 2017).

<sup>60</sup> “Annual Report”, Human Rights Education Institute of Burma, 2012, p. 14.

<sup>61</sup> “YG”, Facebook Page, available at <https://www.facebook.com/EventsYG/timeline> (last visited 25 July 2017); “&PROUD”, FilmFreeway, 2017, available at <https://filmfreeway.com/festival/YangonLGBTFilmFestival> (last visited 25 July 2017).

<sup>62</sup> “Annual Report”, Equality Myanmar, 2014, p. 24, available at <http://equalitymyanmar.org/book/wp-content/uploads/2015/10/2014-EQMM-Annual-Report.pdf> (last visited 25 July 2017).

<sup>63</sup> Lae Phyu Pyar Myo Myint & Nyein Ei Ei Htwe, “Prejudice and progress: a snapshot of LGBT rights in Myanmar”, Myanmar Times, 1 June 2017, available at <http://www.mmtimes.com/index.php/lifestyle/26228-prejudice-and-progress-a-snapshot-of-lgbt-rights-in-myanmar.html> (last visited 25 July 2017).

<sup>64</sup> “The Right to Peaceful Assembly and Peaceful Procession Act”, Pyidaungsu Hluttaw Law No. 15/2011, 2 December 2011, available at [http://www.burmalibrary.org/docs15/2011-Peaceful\\_Assembly\\_and\\_Procession\\_Act-en.pdf](http://www.burmalibrary.org/docs15/2011-Peaceful_Assembly_and_Procession_Act-en.pdf) (last visited 25 July 2017).

<sup>65</sup> Second UPR cycle: *Report of the Working Group*, Myanmar, paras. 127, 145.33-145.36.

Human Rights Commission. Despite notable progress, therefore, many LGBTIQ persons and HRDs still face discrimination and harassment and their position in Myanmar remains vulnerable.

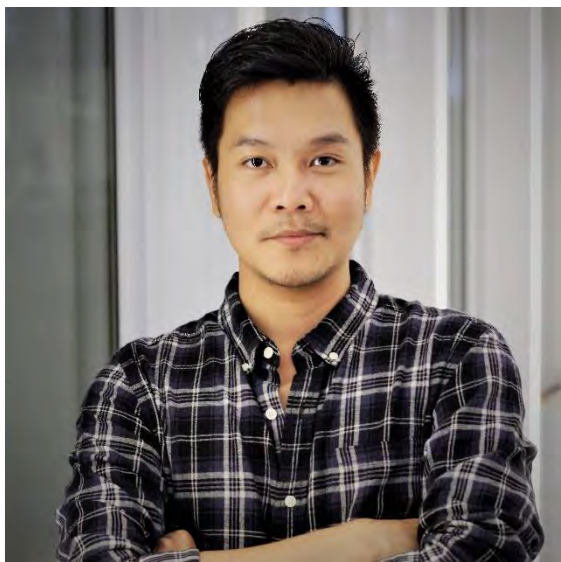
## **Recommendations**

In the lead-up to the third UPR review of Myanmar in October/November 2020:

- CSOs should actively engage in monitoring the implementation of those recommendations Myanmar accepted during the first two UPR cycles so as to gather relevant data on the improvement of the human rights situation in the country and to report at the third UPR cycle.
- CSOs should continue documenting violations and abuses endured by LGBTIQ people and their defenders so as to provide recommending states and the relevant UN mechanisms with solid evidence-based information.
- CSOs and recommending states should emphasise the universality and benefit to Myanmar of reforms such as the abolition of capital and corporal punishment, and the decriminalisation of consensual same-sex sexual activity.
- CSOs and recommending states should work collaboratively to develop UPR recommendations for Myanmar's third cycle that focus on strengthening legal protections for and eliminating discriminatory practices against the LGBTIQ community and LGBTIQ HRDs.

# Myanmar: LGBTIQ HRD Interview

Human Rights of LGBTIQ  
Communities and HRDs:  
Frontline Voices



**Hla Myat Tun,  
Program Director, Colors Rainbow**

## **How did you become involved in lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ) rights work?**

I studied public policy for my Masters and I realised that I want to do human rights. I realised that LGBT rights are more important and there was no one working on LGBT rights in Myanmar around 2010. I started focusing on LGBT rights in 2012. I worked with the LGBT community through the HIV/AIDS [Human Immunodeficiency Virus/Acquired Immune Deficiency Syndromel] programme in 2004. I was doing the HIV/AIDS prevention programme with some INGOs [international non-governmental organisations] in Myanmar

and I was training people on preventive health and HIV issues. Before 2012 I was working for general human rights, human rights documentation against land rights, women's rights, children's rights, torture, ethnic minority rights and transitional justice.

In 2012, I joined my current organisation, a leading LGBT organisation in Myanmar called "Colors Rainbow", and became an LGBT activist. Colors Rainbow was established in 2007 as a LGBT rights programme and through an NGO called "Human Rights Education Institute Burma." We decided to be established as an LGBT organisation in Myanmar and we relocated to Myanmar in 2013 after I joined the organisation. We were based in Thailand, Chang Mai, but in 2013 we relocated here back in Myanmar and we started doing all the advocacy work and awareness raising, training, events, public wellness and community events.

## **What have been the biggest challenges you've faced in advocating for LGBTIQ rights?**

I would say the culture and the Burmese community. The Burmese culture in Myanmar - we never talked about gender and we especially don't really recognise LGBT gender at all. So, we started promoting LGBT identity, gender identity, in 2013, and just let the people know what LGBT gender is. We have different genders and they need

to understand the LGBT gender. So that's what we're doing now.

**Have you ever felt personally at risk because of your work as a human rights defender (HRD)?**

No, because we are different from other countries. Maybe in the past, during the military regime, I would say if I were a human rights activist that I would be at high risk. But I started after the election in 2011, so we relocated here in 2013, according to the given opportunities to establish a human rights organisation. So, I didn't feel I was in danger or at risk at all. So, and especially as an LGBT activist, we are okay. But Burma is a bit different from other countries because we have a lot of transgender people already, a lot of trans and transgender people, working as beauticians and makeup artists and are really accepted in that frame. But they are not really accepted if they want to become a teacher or a lawyer or a politician or another profession. So LGBT are not really highly visible — only trans women are visible everywhere, but not gay men and not lesbian women. So we started raising gender identity of LGBT people along with human rights and equality and non-discrimination based on sexual orientation and gender identity.

**What have been the most successful strategies or techniques you've used to create positive change?**

Promoting LGBT gender identity is a big and right strategy; being seen as HIV-related person do not empower LGBT to come out and be proud. So we started raising awareness about different genders and

sexual orientation and LGBT issues, and started talking about human rights from the gender perspective and abolishing Article 377, which criminalises homosexual acts in the country. Promoting gender identity is the strategy that I think is successful.

**Have there been any celebrations of the LGBTIQ community in Myanmar recently?**

The Transgender Day of Remembrance and Yangon's first parade occurred 20 November 2016. That's the first ever event that we organised as a march. It was not really like a pride parade because the theme was sad and set as Remembrance Day and Memorial Day, so we just informed the local police station that we are going to have a march; they provided security. We didn't make it really big because we didn't have time because the security provision was really short notice and we weren't well organised. But we made it.

On 17 May 2017, we organised IDAHOT [the International Day against Homophobia, Transphobia and Biphobia] at one of the shopping malls in Yangon and celebrated the day. There were thousands of people attended and the event was being receptive.

**How have things have changed over the past few years regarding LGBTIQ rights and being a human rights defender in Myanmar?**

LGBT rights are now raised from a human rights and gender perspective, but before that, the LGBT community was portrayed as always related with HIV/AIDS and sex workers, or STI [sexually transmitted infections], or those kinds of things. But since

we started talking about LGBT and gender identity, we also work with some journalists and the media, provide training for them, and we work with lawyers, so understanding of LGBT and gender identity is improving.

Especially the print media — they started writing about LGBT from a positive point of view and portray them as people with human rights and equality and from a human rights perspective. So the perception towards LGBT, I would not say changing as a whole country, but especially the Yangon community and city community is really changing. There is respect towards LGBT, because there is a lot of visibility and we appear on TV and talk shows in different medias and talking about equality and non-discrimination and equal opportunities in the workplace.

We also provide training for the grassroots level community, and the training also supports the LGBT human rights movement. Because of our training, the LGBT community has power and they realise that we deserve equal rights. So they have power, and they also post their identities on Facebook, and that kind of community empowerment is really effective within the young LGBT community.

So in the past there were only a few — five or 10 out and proud gay guys, even in Yangon city, but there were a lot of trans — but now there are a lot of gays and lesbians and they are out of the closet and really proud and they have high self-esteem of their identities. The online community is also really important and they are also changing things, they are providing their change in society. They are also contributing.

**Do you think the Universal Periodic Review (UPR) recommendations have an impact on Myanmar? Do you think the recommendations lead your government to change policies to strengthen human rights protections?**

It's important to push our government, because honestly most of the members of parliament do not know what the UPR is, so we are introducing what it is and we are just warming up with the process. Only a few organisations are really aware of the UPR process and UPR recommendations. Especially for the LGBT community and organisations, Colors Rainbow is the only organisation that is really familiar with the UPR process and totally involved in the UPR process since the beginning, especially the second cycle.

So for both CSO members and organisations and the government, both sides, we still need to have a lot more information on the UPR process and recommendations. So it will take time for us to really work on the UPR process because the government did not know much about it. At the moment, CSOs seem to know more about the UPR recommendations than the government does.

**What gives you hope when looking to the future of LGBTIQ rights in Myanmar?**

Myanmar is changing really fast. I am really positive with this current government because we voted for them because we believe that they respect human rights and equality and non-discrimination. But not all of the current government and members of Parliament are aware of LGBT issues. Even

the senior officials of the current government, the NLD [National League for Democracy], do not realise that gender issues are important in Myanmar.

**Is there anything in particular you would like to talk about or say that we haven't covered?**

Our government and members of Parliament really need to be aware of, and recognise, the existence of the LGBT community and they need to see the LGBT community as people or a group of people, or the citizens, that they got votes from. So, they have to also consider the rights of the people who voted for them, which is very important, because we voted for them because we believe in the NLD and we believe in their values of human rights. But they have to prove that.

Before, they said they will abolish Article 377, they will repeal Article 377. They know and are aware of the existence of the LGBT community, but now they are in power they

have to prove that. They have to prove what they said.

The LGBT community, ourselves, we need to follow up on what the government has said, what they have committed and what they have promised. Since the government is very new, and they are taking their time to start their administration and operation in the country, because all of the Parliamentarians in the current government are new to the Parliament and they have never experienced this before. So, they have a lot of problems, and at the same time, we are also giving them time and taking our time for ourselves to be able to promote, and build our capacity on advocacy and lobbying. and also collating data for the advocacy and lobbying purpose in upcoming years. So, 2016 is our preparatory time for us and for them. So, we haven't really been pushing the government in 2016 because this is the year for us to build capacity and data gathering and this kind of information gathering for our effective advocacy and lobbying purpose in the upcoming four years.



# The Philippines: Country Profile

## Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

### Introduction

#### UPR Cycles

**First UPR Cycle:** 11 April 2008

**Second UPR Cycle:** 29 May 2012

**Third UPR Cycle:** 8 May 2017

**Fourth UPR Cycle:** ~2021-2022

Issues concerning the lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) community and human rights defenders (**HRDs**) in the Republic of the Philippines (**Philippines**) were raised during all three of its Universal Periodic Review (**UPR**) cycles. The Philippines, moreover, has accepted a wide range of UPR recommendations it received, in particular in

relation to elimination of discrimination against its LGBTIQ community, increasing civil society organisation (**CSO**) involvement in the UPR process, and ensuring human rights training for State security forces. However, it has resisted recommendations in other areas, especially in relation to extrajudicial killings and specifically strengthening protections for HRDs.

This Country Profile sets out how on 20 September 2017 — following the Philippines' participation in the third UPR cycle in May 2017 — its Congress passed the SOGIE [sexual orientation, gender identity, and gender expression] Equality Act. This law outlaws a wide range of acts of discrimination on SOGIE grounds, making their commission punishable by fines and imprisonment. It marks a significant step forward in terms of the protection and equality of the Filipino LGBTIQ community. Other important milestones for Filipino LGBTIQ include the recognition of an LGBTIQ group as a political party, and the election of the first trans person as a Member of Parliament.

Nevertheless, causes for concern remain. The LGBTIQ community remains targeted not only for discrimination but violent attacks including murder. Moreover, a wider culture of extrajudicial

"I feel [the UPR has] an impact, but I think the impact may not be felt right away by the community. There are a lot of things to consider – lobbying, position of the government, the change of leadership. But yes, it really helps because the formulation of UPR is an instrument to unite different organisations, and not just trans or LGB organisations. The UPR alone, the formulation and writing the UPR, unites us."

**Kate Montecarlo Cordova,**  
**Founder and Chair, Association of**  
**Transgender People in the Philippines (ATP)**



killings leaves LGBTIQ people and in particular, their defenders, vulnerable, exacerbated by the Filipino government's reluctance to bolster laws protecting fundamental freedoms. The broader climate also appears to indicate that human rights in the Philippines are under threat, as exemplified by Congress's decision in September 2017 to cut the budget for the Commission on Human Rights to 1,000 pesos (or just under US\$20).<sup>1</sup>

Following the Philippines third UPR and in the lead-up to its fourth UPR in 2021 or 2022, recommending States and civil society organisations (**CSOs**) have an opportunity to work with the Philippines on implementing recommendations the Philippines has accepted, and working to develop enhanced UPR recommendations that eliminate discrimination against the LGBTIQ community and provide greater protection to HRDs.

## Past UPR Cycles for the Philippines

### First UPR Cycle (11 April 2008)

**National Report Filed:**<sup>2</sup> The Philippines' national report for the first UPR was published on 7 March 2008. It did not mention the LGBTIQ community or LGBTIQ HRDs. It did, however, note the growing involvement of CSOs in human rights issues in the State, describing them as "robust and vocal" and playing an active role both as instruments of accountability and as partners in providing support services."<sup>3</sup> The report also noted the establishment of human rights action centres designed to promote and protect human rights at the grassroots level.<sup>4</sup>

**Stakeholders Submissions Made:**<sup>5</sup> The summary of the 31 stakeholders' submissions was published on 11 March 2008. Stakeholders expressed concern in relation to the lack of anti-discrimination laws for lesbians.<sup>6</sup> Stakeholders also raised concern as to the risk of extrajudicial killings, enforced disappearances, arbitrary arrests, ill-treatment and torture in police custody, and threats and acts of harassment against activists working in the field of women's rights or other cause-oriented groups.<sup>7</sup>

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<sup>1</sup> Harriet Agerholm, "Philippines cuts its human rights budget to £15", *The Independent*, 13 September 2017, available at <http://www.independent.co.uk/news/world/asia/philippines-human-rights-budget-cut-rodriago-duterte-war-drugs-isis-marawi-a7944086.html> (last visited 23 November 2017).

<sup>2</sup> *National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Philippines*, U.N. Doc. A/HRC/WG.6/1/PHL/1, 7 March 2008, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/Go8/114/11/PDF/Go811411.pdf?OpenElement> (last visited 1 July 2017).

<sup>3</sup> First UPR cycle: *National Report*, Philippines, para. 21.

<sup>4</sup> First UPR cycle: *National Report*, Philippines, para. 15.

<sup>5</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1: Philippines*, U.N. Doc. A/HRC/WG.6/1/PHL/3, 11 March 2008, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/Go8/115/72/PDF/Go811572.pdf?OpenElement> (last visited 1 July 2017).

<sup>6</sup> First UPR cycle: *Stakeholders' Summary*, Philippines, para. 7.

<sup>7</sup> First UPR cycle: *Stakeholders' Summary*, Philippines, paras. 8, 21.

### **First UPR Cycle for the Philippines: Recommendations Received**

At its first UPR, held in April 2008, the Philippines received a number of recommendations directly relevant to HRDs, albeit not explicitly referring to those working with the LGBTIQ community, namely:

- To establish an organic legal framework for eliminating gender-based discrimination and promoting gender equality (Italy).
- To ensure that members of the security forces are trained on human rights and on their responsibility to protect human rights and HRDs (Canada).
- To completely eliminate torture and extrajudicial killings (Holy See), to intensify its efforts to carry out investigations and prosecutions on extrajudicial killings and punish those responsible (Switzerland), as well as to provide a follow-up report on efforts and measures to address extrajudicial killings and enforced disappearances (The Netherlands).
- While noting the involvement of civil society in the preparatory process of the national report, to fully involve civil society in the follow-up to the review (United Kingdom).

**Source:** *Report of the Working Group on the Universal Periodic Review: Philippines*, U.N. Doc. A/HRC/8/28, 23 May 2008, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/Go8/136/75/PDF/Go813675.pdf?OpenElement> (last visited 1 July 2017).

**Comments Received; Response to Recommendations:** The Philippines received specific comments from delegations during the UPR Interactive Dialogue concerning gender equality<sup>8</sup> and reiterated its willingness to advance gender equality<sup>9</sup> by accepting the recommendation from Italy.

The Philippines also renewed its commitment as a HRD itself to protect the rights of all its citizens<sup>10</sup> and, in this sense, accepted the recommendations about the human rights training to protect HRDs and intensify the prosecution on extrajudicial killings.<sup>11</sup> However, it declined to provide a follow-up on measures to address extrajudicial killings, without development of

<sup>8</sup> First UPR cycle: *Report of the Working Group*, Philippines, paras. 14-15, 17-18, 22-23, 25, 29, 31-32, 45, 53.

<sup>9</sup> First UPR cycle: *Report of the Working Group*, Philippines, paras. 39, 57(a).

<sup>10</sup> First UPR cycle: *Report of the Working Group*, Philippines, para. 57.

<sup>11</sup> First UPR cycle: *Report of the Working Group*, Philippines, paras. 58.2, 58.6(a)(b); *Report of the Working Group on the Universal Periodic Review: Philippines, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/8/28/Add.1, 25 August 2008, paras. 2(b), 2(e)-2(f), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/Go8/161/72/PDF/Go816172.pdf?OpenElement> (last visited 1 July 2017).

its position.<sup>12</sup> Finally, the Philippines accepted the recommendation concerning the involvement of civil society in the UPR process.<sup>13</sup>

## Second UPR Cycle (29 May 2012)

**National Report Filed:**<sup>14</sup> The Philippines' national report for the second UPR was published on 19 March 2012. The report noted the growing involvement of CSOs in discussions regarding the rights of the LGBTIQ community<sup>15</sup> as well as efforts to tackle extrajudicial killings, enforced disappearances, and torture through the establishment of monitoring mechanisms.<sup>16</sup>

**Stakeholders Submissions Made:**<sup>17</sup> The summary of the 42 stakeholders' submissions was published on 12 March 2012. Three joint submissions, submitted by 14 CSOs, reported on human rights violations based on sexual orientation and gender identity.<sup>18</sup> Stakeholders expressed concern over the attitudes of government officials towards the LGBTIQ community following the rejection on "moral grounds" of the application for registration of a political party.<sup>19</sup> Lack of legal protection against discrimination on the basis of sexual orientation and gender identity, in particular in the workplace, was also raised.<sup>20</sup> CSOs urged the Philippines to enact an anti-hate crime law, with particular emphasis on the LGBTIQ community.<sup>21</sup>

### Second UPR Cycle for the Philippines: Recommendations Received

In its second UPR, held in May 2012, the Philippines received a number of recommendations both directly and indirectly relevant to the LGBTIQ community, including its HRDs:

<sup>12</sup> First UPR cycle: *Report of the Working Group*, Philippines, para. 58.6(c); First UPR cycle: *Report of the Working Group, Addendum*, Philippines, para. 5.

<sup>13</sup> First UPR cycle: *Report of the Working Group*, Philippines, para. 58.12; First UPR cycle: *Report of the Working Group, Addendum*, Philippines, para. 2(i).

<sup>14</sup> *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Philippines*, U.N. Doc. A/HRC/WG.6/13/PHL/1, 19 March 2012, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/123/16/PDF/G1212316.pdf?OpenElement> (last visited 1 July 2017).

<sup>15</sup> Second UPR cycle: *National Report*, Philippines, para. 87.

<sup>16</sup> Second UPR cycle: *National Report*, Philippines, para. 25.

<sup>17</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Philippines*, U.N. Doc. A/HRC/WG.6/13/PHL/3, 12 March 2012, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/119/16/PDF/G1211916.pdf?OpenElement> (last visited 1 July 2017).

<sup>18</sup> Second UPR cycle: *Stakeholders' Summary*, Philippines, paras. 28, 50, 82.

<sup>19</sup> Second UPR cycle: *Stakeholders' Summary*, Philippines, para. 12; Commission on Human Rights of the Philippines, 'Submission to the Universal Periodic Review – Philippines', June 2012, para. 35, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/CHRP\\_UPR\\_PHL\\_S13\\_2012\\_CommissiononHumanRightsofthePhilippines\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/CHRP_UPR_PHL_S13_2012_CommissiononHumanRightsofthePhilippines_E.pdf) (last visited 25 July 2017).

<sup>20</sup> Second UPR cycle: *Stakeholders' Summary*, Philippines, para. 28.

<sup>21</sup> Second UPR cycle: *Stakeholders' Summary*, Philippines, para. 27; Philippine Alliance of Human Rights Advocates, "Joint Civil Society Report for the 2nd Cycle Universal Periodic Review", 28 November 2011, pp. 6-7 available at [http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS11\\_UPR\\_PHL\\_S13\\_2012\\_JointSubmission11\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS11_UPR_PHL_S13_2012_JointSubmission11_E.pdf) (last visited 25 July 2017); *Submission of the Civil Society Organizations Coalition Report on the situations of Lesbian, Gay, Bisexual and Transgender persons in the Philippines for the 13th Session of the UN Universal Periodic Review For the Philippines*, 21 May - 1 June 2011, pp. 6-7, available at

- Consider establishing comprehensive legislation to combat discrimination faced by LGBT people (Argentina).
- Continue efforts to tackle extrajudicial killings and enforced disappearances to strengthen the rule of law and respect for human rights (Singapore, Republic of Korea, Trinidad and Tobago, Germany, Sweden, United States of America, Timor-Leste, Austria).
- Take necessary measures to provide adequate protection to journalists and HRDs (France).
- Continue human rights education and training programmes, including for security and law enforcement agencies (Egypt, Morocco, France, Japan, United States of America, Venezuela (Bolivarian Republic of)).
- Enhance cooperation with the Special Rapporteur on the situation of HRDs including by accepting the mandate holder's requests to visit the country (Ireland).

**Source:** *Report of the Working Group on the Universal Periodic Review: Philippines*, U.N. Doc. A/HRC/21/12, 9 July 2012, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/151/22/PDF/G1215122.pdf?OpenElement> (last visited 1 July 2017).

**Comments Received; Response to Recommendations:** In response to the recommendations received, the Philippines advised that the State had "embarked on a number of initiatives to protect and promote the rights of lesbian, gay, bisexual and transgender people."<sup>22</sup> The Philippines noted the recommendation concerning the warning about discrimination faced by LGBT people, explaining that "[a]n Anti-Discrimination Bill that includes specific provisions that address discrimination faced by LGBTs is currently pending in the Philippine Congress."<sup>23</sup>

The Philippines received specific comments from delegations during the UPR Interactive Dialogue concerning, among other things, efforts to address extrajudicial killings and enforced disappearances.<sup>24</sup> Representatives of the government responded by reiterating the government's commitment to consider such cases as priority cases.<sup>25</sup> The Philippines accepted every other recommendation it received in the second UPR cycle.

[http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS13\\_UPR\\_PHL\\_S13\\_2012\\_JointSubmission\\_13\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS13_UPR_PHL_S13_2012_JointSubmission_13_E.pdf) (last visited 25 July 2017).

<sup>22</sup> Second UPR cycle: *National Report*, Philippines, para. 94.

<sup>23</sup> *Report of the Working Group on the Universal Periodic Review: Philippines, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/21/12/Add.1, 19 September 2012, para. 4, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/168/13/PDF/G1216813.pdf?OpenElement> (last visited 1 July 2017).

<sup>24</sup> Second UPR cycle: *Report of the Working Group*, Philippines, paras. 34, 37, 40, 43-44, 46, 51, 57-58, 63, 70, 75-76, 78, 104.

<sup>25</sup> Second UPR cycle: *Report of the Working Group*, Philippines, paras. 80-84.

## Third UPR Cycle (8 May 2017)

**National Report Filed:**<sup>26</sup> The Philippines' national report for the third UPR was published on 1 May 2017. The report noted that the Philippines already had anti-discrimination laws and policies in place protecting LGBTIQ people<sup>27</sup> and added that a "bill prohibiting discrimination on the basis of SOGIE aimed to ensure equal treatment in the workplace, schools, commercial establishments, and government offices was currently pending before Congress."<sup>28</sup> The report also described how the Philippines "continues its conduct of seminars [education programs on the Anti-Torture Law and other human rights violations], workshops and other judicial and legal education programs for justices, judges, court personnel and lawyers."<sup>29</sup> However, the report did not mention cases concerning HRDs.

**Stakeholders Submissions Made:**<sup>30</sup> The summary of the 53 stakeholders' submissions was published on 27 February 2017. Stakeholders expressed concern about the discrimination endured by LGBTIQ people because of the absence of laws "enabling them to change their name and civil status"<sup>31</sup> or "recognising same-sex partnership."<sup>32</sup> They further noted the absence of constitutional protections for the LGBTIQ community and reported that LGBTIQ were subjected to hate speech, harassment and bullying.<sup>33</sup> Stakeholders also reported numerous cases of attacks against and extrajudicial killing of HRDs<sup>34</sup> and "excessive use of force by law enforcement agencies when dispersing peaceful assemblies."<sup>35</sup>

### Third UPR Cycle for the Philippines: Recommendations Received

In its third UPR, held in July 2017, the Philippines received a number of recommendations relevant to the LGBTIQ community and the HRD situation:

- Take action to eradicate violence and discrimination against women and LGBTI persons (Mexico).
- Consolidate its recent progress through implementation of comprehensive anti-discrimination legislation covering sex and sexual orientation, gender identity and intersex status (Australia).

<sup>26</sup> *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Philippines*, U.N. Doc. A/HRC/WG.6/27/PHL/1, 1 May 2017, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/PHIndex.aspx> (last visited 1 July 2017).

<sup>27</sup> Third UPR cycle: *National Report*, Philippines, para. 96.

<sup>28</sup> Third UPR cycle: *National Report*, Philippines, para. 98.

<sup>29</sup> Third UPR cycle: *National Report*, Philippines, paras. 141, 155.

<sup>30</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Philippines*, U.N. Doc. A/HRC/WG.6/27/PHL/3, 27 February 2017, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/046/69/PDF/G1704669.pdf?OpenElement> (last visited 1 July 2017).

<sup>31</sup> Third UPR cycle: *Stakeholders' Summary*, Philippines, para. 23.

<sup>32</sup> Third UPR cycle: *Stakeholders' Summary*, Philippines, para. 24.

<sup>33</sup> Third UPR cycle: *Stakeholders' Summary*, Philippines, paras. 22, 25-26.

<sup>34</sup> Third UPR cycle: *Stakeholders' Summary*, Philippines, paras. 63-64.

<sup>35</sup> Third UPR cycle: *Stakeholders' Summary*, Philippines, para. 67.

- Eliminate discriminatory stereotypes based on gender (Honduras).
- Take all necessary measures to protect the life of HRDs (Germany, Slovakia, Norway, Poland, Ukraine, United Kingdom of Great Britain and Northern Ireland) in particular regarding enforced disappearances and extrajudicial killings (Estonia, Denmark).
- Provide adequate resourcing to the Commission on Human Rights and allow it to investigate alleged extrajudicial killings (Australia).
- Take measures to put an end to extrajudicial, summary or arbitrary executions and prosecute the perpetrators of these acts (France, Costa Rica, Spain, Poland, Netherlands, Lithuania, Canada, Germany, Chile, Australia).
- Take steps to create and maintain in law and in practice a safe and enabling environment for civil society and HRDs (Ireland).
- Establish an effective protection system for HRDs and journalists and ensure the free exercise of their rights to freedom of opinion, expression and association (Luxembourg).
- Redouble efforts to protect freedom of opinion and belief and to promote media freedom and the rights of journalists (Botswana, Lebanon).
- Ensure human rights training for State security forces in order to enhance their capacity to protect human rights (Ghana).

**Source:** *Report of the Working Group on the Universal Periodic Review: Philippines*, U.N. Doc. A/HRC/36/12, 18 July 2017, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/194/21/PDF/G1719421.pdf?OpenElement> (last visited 13 November 2017).

**Comments Received; Response to Recommendations:** During the UPR Interactive Dialogue, the Philippines received comments welcoming its “efforts to prohibit discrimination based on sexual orientation and gender-identity.”<sup>36</sup> The Philippines also stressed that “Filipinos longed for the rule of law, equality and respect for the human rights of all people regardless of faith, social status, sexual orientation, age, disabilities, ethnicity, or whether they are from urban or rural areas,” and that there were State measures in place “that addressed discrimination and hate crimes, including on the grounds of sexual orientation and gender identity.”<sup>37</sup>

The Philippines only noted the recommendations concerning the warning about discrimination faced by LGBTIQ people,<sup>38</sup> with the exception of the recommendation from Mexico

<sup>36</sup> Third UPR cycle: *Report of the Working Group*, Philippines, paras. 29, 117.

<sup>37</sup> Third UPR cycle: *Report of the Working Group*, Philippines, paras. 6, 72.

<sup>38</sup> *Report of the Working Group on the Universal Periodic Review: Philippines, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/36/12/Add.1, 19 September 2017, para. 6, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/PHIndex.aspx> (last visited 13 November 2017).

concerning the eradication of the violence against women and LGBTI persons.<sup>39</sup> The Philippines accepted this recommendation, although it did not mention LGBTIQ people in its acceptance.<sup>40</sup>

Various countries expressed concern with the recent high number of attacks on HRDs and extrajudicial killings in the Philippines.<sup>41</sup> During the UPR Interactive Dialogue, government representatives responded that critics and media “deliberate[ly] attempt to include all homicides related to the campaign against illegal drugs as extrajudicial killings and to say that they were State-sponsored, which was not true”<sup>42</sup> and explained that “although deaths arising from law enforcement operations were presumed to be legitimate, they were automatically investigated” nevertheless.<sup>43</sup> In this way, the Philippines noted all the recommendations on those attacks as on the protection of HRDs,<sup>44</sup> although it did not formally accept them.<sup>45</sup>

The Philippines did, however, accept the recommendation for ensuring human rights training for State security.<sup>46</sup> At the same time, however, it merely noted without accepting recommendations about the protection of freedom of opinion, expression and association.<sup>47</sup>

## Situation of the LGBTIQ Community and its HRDs in the Philippines

### Right to Equality and Non-Discrimination

**Public Opinion:** A 2013 survey conducted by the Pew Research Center shows that 73% of Filipinos believe that homosexuality should be accepted by society.<sup>48</sup> However, while the Philippines is ranked among the most LGBTIQ-friendly countries in the world, Filipino LGBTIQ HRDs questioned the results of this survey, claiming that the apparent acceptance of homosexuality may well only be a “veiled tolerance [...] centered around stereotypes.”<sup>49</sup> This is illustrated by the reprimands faced by gay and lesbian people in the military if they display “gay behaviour.”<sup>50</sup>

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<sup>39</sup> Third UPR cycle: *Report of the Working Group*, Philippines, para. 133.126.

<sup>40</sup> Third UPR cycle: *Report of the Working Group, Addendum*, Philippines, para. 5.

<sup>41</sup> Third UPR cycle: *Report of the Working Group*, Philippines, paras. 41, 53, 57, 78.

<sup>42</sup> Third UPR cycle: *Report of the Working Group*, Philippines, para. 8.

<sup>43</sup> Third UPR cycle: *Report of the Working Group*, Philippines, para. 8.

<sup>44</sup> Third UPR cycle: *Report of the Working Group, Addendum*, Philippines, para. 6.

<sup>45</sup> This is standard diplomatic language commonly used by States under review to declare that they do not accept a given recommendation.

<sup>46</sup> Third UPR cycle: *Report of the Working Group, Addendum*, Philippines, para. 5.

<sup>47</sup> Third UPR cycle: *Report of the Working Group, Addendum*, Philippines, para. 6.

<sup>48</sup> “The Global Divide on Homosexuality: Greater Acceptance in More Secular and Affluent Countries”, Pew Research Center, 4 June 2013, p. 1, available at <http://www.pewglobal.org/files/2013/06/Pew-Global-Attitudes-Homosexuality-Report-FINAL-JUNE-4-2013.pdf> (last visited 25 July 2017).

<sup>49</sup> Patricia Denise Chiu, “Pinoys are gay friendly? Only on paper, says LGBT activist”, GMA news, 11 June 2013, available at <http://www.gmanetwork.com/news/story/312328/news/nation/pinoys-are-gay-friendly-only-on-paper-says-lgbt-activist> (last visited 25 July 2017).

<sup>50</sup> Dona Z. Pazzibugan & Frances Mangosing, “PMA now open to gays but don’t show it”, Inquirer, 11 July 2012, available at <http://newsinfo.inquirer.net/226686/pma-no-ban-on-gay-lesbian-enrollees> (last visited 25 July 2017).

**Legal Protection:** On 20 September 2017, the Philippines Congress unanimously passed the SOGIE Equality Act.<sup>51</sup> This bill, proposed and initially approved in principle in 2015,<sup>52</sup> built on a series of failed attempts to enact specific protections for members of the LGBTIQ community since a 1995 attempt at a law recognising a “third sex.”<sup>53</sup>

The SOGIE Equality Act introduces offences — punishable by fines and up to six years' imprisonment — for a wide range of discriminatory acts based on SOGIE grounds. Punishable acts include those in relation to equal access to public services; employment; education; health services; various forms of harassment (such as by law enforcement officers, or forced “outing” of LGBTIQ people); and child protection.<sup>54</sup> Another version of the SOGIE Equality Act<sup>55</sup> remains pending before the Philippines Senate.<sup>56</sup>

The passage of the SOGIE Equality Act represents the Philippines' successful fulfilment of UPR recommendations it has previously accepted, namely Italy's recommendation during the first UPR that the Philippines establish an organic legal framework for eliminating gender-based discrimination and promoting gender equality, and Argentina's recommendation during the second UPR that the Philippines establish comprehensive legislation to combat discrimination faced by LGBT people. This act also goes towards fulfilment of Mexico's recommendation during the third UPR that the Philippines take action to eradicate violence and discrimination against women and LGBTI persons, despite the fact that the Philippines' acceptance of this recommendation did not specifically mention LGBTIQ people.

## Right to Security of the Person

**Extrajudicial Killings:** Consistent with various delegations' concerns at the first, second and third UPRs,<sup>57</sup> the Philippines still struggles with addressing extrajudicial killings and, indeed, holds the highest record of hate crimes against the transgender community in ASEAN, with 43

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2017); “PMA: No cross-dressing for gay, lesbian cadets”, ABS-CBN News, 11 July 2012, available at <http://news.abs-cbn.com/nation/07/10/12/pma-no-cross-dressing-gay-lesbian-cadets> (last visited 25 July 2017).

<sup>51</sup> “House approves anti-discrimination bill on 3rd and final reading”, CNN Philippines, 23 September 2017, available at <http://cnnphilippines.com/news/2017/09/20/House-approves-anti-discrimination-bill-3rd-and-final-reading.html> (last visited 23 November 2017).

<sup>52</sup> Fritzie Rodriguez, “The long road to an LGBT anti-discrimination law”, Rappler, 29 July 2015; “House panel OKs bill on sex discrimination”, The Manila Times, 25 June 2015, available at <http://www.manilatimes.net/house-panel-oks-bill-on-sex-discrimination/195063/> (last visited 25 July 2017).

<sup>53</sup> Rambo Talabong, “Proponents hope to pass anti-discrimination bill in 17th Congress”, Rappler, 30 June 2016, available at <http://www.rappler.com/move-ph/issues/gender-issues/137968-anti-discriminatory-bill-17th-congress> (last visited 25 July 2017).

<sup>54</sup> “House approves anti-discrimination bill on 3rd and final reading”, CNN Philippines, 23 September 2017.

<sup>55</sup> 17th Congress of the Republic of The Philippines, “An Act Prohibiting Discrimination on the Basis of Sexual Orientation and Gender Identity or Expression (SOGIE) and Providing Penalties Therefor”, Senate Bill 935, Explanatory Note, 1 August 2016, p. 1, available at <http://www.senate.gov.ph/lisdata/2449221076!.pdf> (last visited 25 July 2017).

<sup>56</sup> “House approves anti-discrimination bill on 3rd and final reading”, CNN Philippines, 23 September 2017.

<sup>57</sup> First UPR cycle: *Report of the Working Group*, Philippines, paras. 19, 24, 26, 28-29, 39, 41, 46-47, 52, 58.6; Second UPR cycle: *Report of the Working Group*, Philippines, paras. 129.12-129.16, 129.28-129.29, 129.35, 131.32; Third UPR cycle: *Report of the Working Group*, Philippines, paras. 133.43, 133.86, 133.100, 133.102-133.111, 133.116-133.119, 133.141-133.149, 133.152, 133.154, 133.173.



transgender and gender-diverse persons murdered between 2008 and 2016.<sup>58</sup> Moreover, with the presidency of Duterte, CSOs such as the International Peace Observers Network (**IPON**) have noted a stark increase in extrajudicial killings related to the “war on drugs” and have expressed concerns that these killings will be extended to HRDs and other activists,<sup>59</sup> a concern which is exacerbated by the Filipino Congress’s decision in September 2017 to slash the budget for the Philippines’ Commission on Human Rights.<sup>60</sup>

**High-Profile Cases:** On 23 March 2015, the trial of U.S. Marine Joseph Scott Pemberton for the murder of Filipina transwoman Jennifer Laude commenced, with reporters being banned from the courtroom<sup>61</sup> and one of the lawyers for the family barred from representing them in the criminal aspects of the case.<sup>62</sup> Initially sentenced to 12 years’ imprisonment, Pemberton saw his sentence reduced to 10 years’ imprisonment on 29 March 2015.<sup>63</sup> A few weeks after the murder of Jennifer Laude, another Filipina transwoman, Mary Jo Añonuevo, was found dead after she was stabbed 33 times on 21 October 2014.<sup>64</sup>

Activists reacted to the murders — in particular to the highly publicised case of Jennifer Laude — with protests and statements hoping that the media attention would start “a slow movement toward bringing transgender issues to the mainstream.”<sup>65</sup> It was also stated that while the transgender community was visible in the Philippines, violence against them was not discussed.<sup>66</sup>

## Right to Participation in Public Life

**Participation in Elections:** In 2009, the LGBTIQ group Ang Ladlad filed an application to become an accredited political party in order to run in the 2010 elections.<sup>67</sup> The group was

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<sup>58</sup> “Trans Murder Monitoring Update: Trans day of visibility 2017”, Transrespect versus Transphobia Worldwide, 2017, p. 1, available at [http://transrespect.org/wp-content/uploads/2017/03/TvT\\_TMM\\_TDoV2017\\_Tables\\_EN.pdf](http://transrespect.org/wp-content/uploads/2017/03/TvT_TMM_TDoV2017_Tables_EN.pdf) (last visited 25 July 2017).

<sup>59</sup> “One year Rodrigo Duterte: A dark chapter for human rights?”, International Peace Observers Network (IPON), 30 June 2017, p. 1, available at [http://www.ipon-philippines.info/fileadmin/user\\_upload/20170630\\_Press\\_Release\\_One\\_Year\\_Duterte.pdf](http://www.ipon-philippines.info/fileadmin/user_upload/20170630_Press_Release_One_Year_Duterte.pdf) (last visited 25 July 2017).

<sup>60</sup> Harriet Agerholm, “Philippines cuts its human rights budget to £15”, The Independent, 13 September 2017.

<sup>61</sup> Allan Macatuno, “PNP expert: Laude strangled, drowned”, Inquirer, 5 May 2015, available at <http://globalnation.inquirer.net/122413/pnp-expert-laude-strangled-drowned> (last visited 25 July).

<sup>62</sup> Rservern, “Trial Begins in the Killing of Jennifer Laude”, Dayli Kos, 25 March 2015, available at <http://www.dailykos.com/story/2015/03/24/1373040/-Trial-begins-in-the-killing-of-Jennifer-Laude#> (last visited 25 July 2017).

<sup>63</sup> AC Nicholls, “Court affirms Pemberton’s conviction but reduces sentence to up to 10 years”, CNN Philippines, 4 April 2016, available at <http://cnnphilippines.com/news/2016/04/03/joseph-scott-pemberton-jennifer-laude-olongapo-regional-trial-court-decision-downgraded.html> (last visited 25 July 2017).

<sup>64</sup> Lexie Cannes, “Second Philippines transgender murder fuels additional community outrage”, Lexie Cannes State of Trans, 31 October 2014, available at <https://lexiecannes.com/2014/10/31/second-philippines-transgender-murder-fuels-additional-community-outrage/> (last visited 25 July 2017).

<sup>65</sup> Per Liljas, “Philippine Transgender Murder Becomes a Rallying Point for LGBT Rights”, Time Magazine, 24 October 2014, available at <http://time.com/3536215/philippines-transgender-murder-jennifer-laude-lgbt-rights/> (last visited 25 July 2017).

<sup>66</sup> Per Liljas, “Philippine Transgender Murder Becomes a Rallying Point for LGBT Rights”, Time Magazine, 24 October 2014.

<sup>67</sup> “In the Matter of the Petition for Registration of Ang Ladlad LGBT Party for the Party-List System of Representation in the House of Representatives”, Commission on Elections of the Philippines (Second

originally denied accreditation by the Commission on Elections because the group “tolerates immorality which offends religious beliefs.”<sup>68</sup> On 8 April 2010, the Supreme Court of the Philippines held that Ang Ladlad had established its qualifications to participate in the party-list system, and that the moral objection offered by the Commission on Elections was not a limitation imposed by law.<sup>69</sup> Consequently, the Supreme Court overturned the Commission’s decision and marked a victory for LGBTIQ HRDs and the LGBTIQ community.

**First Transgender Member of Parliament:** Another triumph for LGBTIQ HRDs and the LGBTIQ community came with the election to the Filipino Congress in May 2016 of Geraldine Roman, the Philippines’ first openly transgender politician.<sup>70</sup> While Roman’s campaign faced mockery from her opponents, she ultimately won election to public office.

## Conclusion

Since its first UPR cycle, the Philippines has shown a receptiveness to many recommendations it has received from other delegations in relation to issues relevant to its LGBTIQ community and its defenders. This does not extend to the issue of extrajudicial killings, however, with representatives of the government notably pushing back during the recent third UPR on this issue, and also failing to support recommendations that the Philippines bolster its protection of various fundamental freedoms.

Nevertheless, since the outset of the Philippines’ participation in the UPR process, there has been noted advancement in the area of LGBTIQ protection. Following two decades of work, the SOGIE Equality Act that was passed in September 2017 represents a potential watershed moment for the LGBTIQ community. In 2010, the Supreme Court upheld the right of the LGBTIQ group Ang Ladlad to be recognised as a political party, while in 2016, Geraldine Roman became the first transgender person to be elected as a Member of Parliament.

It remains to be seen whether these milestones will impact on the lived reality for Filipino LGBTIQ people. Violence against them, including extrajudicial killings, remaining an unfortunate reality. Similarly, the ongoing extrajudicial killings and lack of protection of fundamental freedoms means that HRDs are increasingly vulnerable.

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Division), 11 November 2009, available at [http://www.sxpolitics.org/wp-content/uploads/2009/11/spp\\_09\\_2281.pdf](http://www.sxpolitics.org/wp-content/uploads/2009/11/spp_09_2281.pdf) (last visited 25 July 2017).

<sup>68</sup> “In the Matter of the Petition for Registration of Ang Ladlad LGBT Party for the Party-List System of Representation in the House of Representatives”, Commission on Elections of the Philippines (Second Division), 11 November 2009.

<sup>69</sup> *Ang Ladlad v. Commission on Elections (COMELEC)*, Supreme Court of the Philippines, 8 April 2010, available at <http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/190582.htm> (last visited 25 July 2017).

<sup>70</sup> Romil Patel, “Meet Geraldine Roman, Philippines’ first transgender Congress politician with ‘a beautiful message””, International Business Times, 14 May 2016, available at <http://www.ibtimes.co.uk/meet-geraldine-roman-philippines-first-transgender-congress-politician-beautiful-message-1559968> (last visited 25 July 2017).

## Recommendations

Following the third UPR review of the Philippines in May 2017 and in the lead-up to the Philippines' fourth UPR review in 2021 or 2022:

- CSOs should actively engage in monitoring the implementation of those recommendations the Philippines accepted during the first three UPR cycles so as to gather relevant data on the improvement of the human rights situation in the country and to report at the third UPR cycle.
- CSOs should continue documenting violations and abuses endured by LGBTIQ people and their defenders so as to provide recommending states and the relevant UN mechanisms with solid evidence-based information.
- CSOs and recommending States should work collaboratively to develop UPR recommendations for the Philippines that focus on eliminating discriminatory practices against the LGBTIQ community; and on strengthening legal protections for HRDs, in particular, through protection of the exercise of fundamental freedoms.

# The Philippines: LGBTIQ HRD Interview

Human Rights of LGBTIQ  
Communities and HRDs:  
Frontline Voices



**Kate Montecarlo Cordova,  
Founder and Chair,  
Association of Transgender  
People in the Philippines (ATP)**

**When did you begin your activism and how did you become involved in lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ) rights work?**

Currently, I do trans advocacy work but I work as a full-time employee in a US financial institution in the Philippines as a Unit Manager.

While full-time in my job as a Unit Manager, it also seems that I work full-time as a transgender activist due to the responsibilities I have as a Founding Chair of

the Association of Transgender People in the Philippines (**ATP**) and the issues that involve transgender community.

It all began when I felt a little bit stressed at work and I wanted a little bit of fresh air. So, I looked for something that would give me some fun but at the same time fun that empowers me and would lead to personal development and growth. Then a friend of mine introduced me to a transgender support group in 2011. That was the time I learned the concept of transgender phenomenon.

A couple of months after that, I was appointed as Vice-President. I was hesitant at first, because initially, my purpose was just to look for something to do during my rest days. However, it was explained to me that as a Vice-President, my task focuses on organisational management and people empowerment. I accepted the offer, thinking that I could be of help to the organisation while leveraging my leadership and managerial skills.

Being in the organisation and having the position, it exposed me to the different facets of transgender advocacy like HIV/AIDS [Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome] issues, transgender rights issues, sexual and reproductive health issues as well as the psychological well-being of the transgender people. Then, something

unexpected happened; the group faced a big organisational crisis and that demanded immediate elections.

Seeing the complexities, I did not want to run; however a friend told me again that the organisation needed me, in particular because I could help with structuring and that, after that I could reconsider stepping down. In the name of advocacy and love of service, I was convinced to run for re-election.

I was elected. Greater responsibilities, more exposures and enhanced knowledge in transgender issues are what I got. I realised then that the community needs a voice. That the community needs love and care. That the community must be heard. And to be heard, the voice must be loud. That to be loud, it needs the synergy of the community members. That there's a need for unity instead of division.

So, I thought of creating a website that would serve as a repository of transgender documents, photos, events, etc., of all transgender organisations in the Philippines (at that time there was none), which would also serve as a reference of the people. I called different trans leaders from different trans organisations and I introduced it to them. Initially, we had an agreement to create an alliance so we can calibrate the issues we need to prioritise. However, we encountered some challenges when it comes to schedule and leaders were busy doing their respective priorities. It was very challenging. Because of the challenge to gather trans leaders, I decided to convert it to a trans organisation dealing with hardcore trans issues like human rights, HIV/AIDS,

trans health, employment, community mobilisation and empowerment of trans leaders. That is how The Association of Transgender People in the Philippines (ATP) was conceived.

Prior to my involvement in the transgender activism, I had been immersed in the different transgender communities in the Philippines. I joined trans beauty pageants for a decade, before I moved to Japan where I worked for 8 years as an entertainer. During that time, every trans woman in the Philippines dreamed to work in Japan — where they earn not just money but also earning respect, love and care from Japanese men. The world of beauty pageant and the world of entertainment in Japan are two worlds that trans people would like to work in. I was with the community my whole life; so, when I joined the corporate world, everything was new to me.

After having worked for many years in the corporate world, away from the community, I changed a lot and it took time to get used to the trans world again.

Notwithstanding the stress and the responsibilities related to my position as chair of a hardcore transgender organisation, composed of transmen and transwomen, I enjoyed my work because it is fulfilling to make people smiling and happy; it is fulfilling to help and empower others. It's satisfying to know that more and more people of transgender experience are getting familiar of their rights and getting stronger to stand for their rights. It is equally satisfying to see cisgender men and women beginning to understand the issues of trans people and their number supporting our rights is getting

bigger. I was very pleased to see the community is getting stronger and different government agencies, private companies, local government units, NGOs, etc are getting familiar with our needs.

Now, before I know it, I am already into transgender activism. But now, I am more focus on community organisation and trans leadership empowerment.

**What have been the biggest challenges you've faced in advocating for LGBTIQ rights as a human rights defender (HRD)?**

One of the biggest challenges is involving the community. I recognise there are other challenges: funding, connection with government, etc. But I always believe that if the community really works hard and the community is really involved and the community itself has a deeper understanding of what we are fighting for, then it would be easier for transgender advocacy to progress naturally. Within the trans community, which is very diversified, there is not enough understanding of what are our rights. Transgender persons often suffer internalised stigma and subconsciously face internal transphobia — believing that we are lucky enough because we are tolerated. In our daily life, transgender discrimination still reigns supreme due to cultural and religious influence — classifying cis-hetero-normative gender binary as the order of nature and deviation from this, is an abomination to God. Philippines is one of the top countries in Asia when it comes to trans murder incidents. While the government remains silent about this, the community

sluggishly act on it. The community remains immobilised.

As of now, the challenge we have is the lack of human resources: there are a lot of highly educated and talented trans people in the Philippines, but these people are so busy with their personal lives. Those who have time to engage in advocacy don't have money to attend meetings. I think the greatest challenge is how to awake the members of the community from a slumber of indifference and apathy so they get involved in strengthening the assertion of our legal rights. Our voices, if united, are strong enough to shape the society. We have the numbers. We have the talent. We all have what it takes to make a difference. What we don't have is the consciousness to act in unity to realise the significance of our human rights, our legal rights.

**What have been the most successful strategies or techniques you've used to create positive change?**

Community mobilisation and leadership empowerment are key positive changes in trans advocacy. It is really connecting and engaging with the whole community through online (e.g. Facebook) and in-person activities. Raising awareness about the difficulties transgender persons endure in our society — from the impossibility to use public toilets without simply being identified as a man or a woman to the lack of access to education — is very important to create change.

For instance, our organisation was able to hold a big event — IDAHOT (the International Day against Homophobia, Transphobia and

Biphobia] — even without funding. We didn't spend anything at all. Our organisation had no money. However, we were able to gather a big number of transgender beauty queens, from past to present to parade celebration of the [IDAHOT]. It was a huge success. It was just the cooperation of the members of ATP in collaboration of the community. Our ATP members joined hands together from conceptualising to implementation. Our members did all the necessary requirements from securing permits to security implementation.

A good strategy I consider a success is really letting the community understand what the advocacy is for. Compared to three or four years ago, even the educated ones did not understand what transgender meant. People thought that surgery meant transgender. Now the community, even in the provinces of the Philippines, know what transgender means. They may not have the full knowledge and understanding of transgender advocacy but by just being aware of their rights and ready to commit when necessary, is a sign of progress. No one can help us, except us.

Working with the different organisations, private, government or NGOs also helps a lot. I believe having a good ally is equally important.

Again, the key is the community. Our community is composed of people from different levels of the society. If our community is tapped and is aware of the essence of what we are fighting for, we can simultaneously affect the different layers of our society — from the familial level to the

highest position in the government. And the effect is enormous.

### **What do you think about the election of Geraldine Roman to the government of the Philippines?**

Her victory is a sign of good progress that gives our community hope — that there's a chance... Her election was not because of our advocacy though. She came from a family of politicians, her father had been a congressman, so whether she was transgender or not, it did not matter. However, it still promotes visibility. One good thing about her being in a position is her knowledge to trans issues. She can be a voice of LGBT people in Congress. She can also serve as an inspiration to the young ones — not to lose hope. Geraldine being in Congress is a big help. Her mere presence alone can somehow "sensitise" government officials and employees.

Her victory is our success. I would love to see her occupying the Senate in the near future.

### **Does your government do enough to protect LGBTIQ rights?**

That is a very hard question, because I cannot speak for the government. But as we speak, there are no laws which protect LGBT rights, but that is debatable. We cannot also conclude that the Philippine government is detrimental to our rights, because our government does not criminalise any acts of homosexuality, or anything against the LGBT community. We are also positive that an anti-discrimination policy will be passed during the Duterte administration. In the

name of advocacy, we are far behind. There are some laws that can be used against us. An example is the anti-clerical law, which is a subtle anti-trans law. So speaking of transgender health, I can say our government does not protect us. We do not have anything that promotes the health and general well-being of transgender people. Our sexual and reproductive health needs are not addressed. There are not medical doctors specialising in trans healthcare in the Philippines.

To add, trans murder incidents in the Philippines are rampant. In fact, there's one trans woman who was killed by a US Marine which became sensationalised yet the government did not say anything about protecting transgender life, at least transgender rights. We need new politicians and lawmakers. We need younger political figures to occupy government positions to speed up the progress of what we are fighting for.

**Do you think the Universal Periodic Review (UPR) recommendations have an impact on the Philippines?**

I feel there is an impact, but I think the impact may not be felt right away by the community. There are a lot of things to consider: lobbying, position of the government, the change of leadership. But yes, it really helps because the formulation of UPR is an instrument to unite different organisations, and not just trans or LGB organisations. The UPR alone, the formulation and writing the UPR, unites us.

UPR recommendations is a way to pressure the government. Other countries are watching us...

**Does civil society know how to use the UPR recommendations for advocacy in the Philippines?**

Yes and no. While there are organisations involved in crafting documents for UPR and know how to use it, there are still a lot and a huge number of organisations which don't. So I think, better coordination, connection and unity will help. This instrument is very useful to advance our advocacy.

**What gives you hope when looking to the future of LGBTIQ rights in the Philippines?**

I am positive about the future of our LGBTIQ people in the Philippines. However, we also believe that our future is affected by the progress in the United States, United Nations, and other international agencies, etc. Whether we like it or not, globalisation influence the way we live. This is the reason why, we don't just work here, we support international progress. We monitor the development in the US and other nations. What we need to do is to continue educating our youth. They will decide what is good for them. Our young LGBTIQ people must be nurtured in such a way that they can withstand the pressure of the fight for their rights. We need to continue strengthening our leaders and empowering them to become great leaders of our community.

With the advent of information technology and the reign of globalisation, Philippines is getting an influx of call centers. The advent of foreign companies has changed a lot the



way trans people are treated. These foreign companies mostly coming from US have anti-discrimination policies. This paved a way for transgender people to get decent jobs, compared to before where they were only ensconced in the entertainment

industry and beauty salons. Before, transwomen were stereotyped as beauticians. But now, you see them as managers in companies, so I am seeing progress.

# Singapore: Country Profile

## Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

### Introduction

#### UPR Cycles

**First UPR Cycle:** 6 May 2011

**Second UPR Cycle:** 27 January 2016

**Third UPR Cycle:** January/February 2021

Issues related to the lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) community and human rights defenders (**HRDs**) of the Republic of Singapore (**Singapore**) were raised in both Singapore's first and second Universal Periodic Review (**UPR**) cycles. As this

Country Profile details, however, UPR recommendations that aimed to further protect and promote LGBTIQ rights frequently failed to enjoy Singapore's support.

Singapore is reportedly one of the few Association of Southeast Asian Nation (**ASEAN**) States that refused to include a clause protecting LGBTIQ rights in the ASEAN Human Rights Declaration (**AHRD**).<sup>2</sup> Indeed, this Country Profile outlines how the lack of adequate laws and policies still expose Singapore's LGBTIQ community to risk, including in respect of security and discrimination. Moreover, members of the community still face online harassment and general ill-treatment. HRDs working on LGBTIQ rights and the LGBTIQ community generally are also vulnerable due to Singapore's restrictive practices with regard to freedoms of opinion, expression and assembly and the right to participate in the cultural life of the community. HRDs in particular may be vulnerable if they criticise the government and media, with LGBTIQ content often censored or blocked.

In the lead up to Myanmar's third UPR cycle in January/February 2021, civil society organisations (**CSOs**) and recommending States have an opportunity to work towards developing improved UPR recommendations that focus on the universality and benefit to Singapore of various proposed reforms.

"Building a nuanced conversation around LGBT rights in Singapore will be tough, and I think it's going to take a bit longer, but be more inclusive."

**Benjamin Xue,**  
**Chief Engagement Officer,**  
**campaign.com, The Social**  
**Network #ForChange**

## Past UPR Cycles for the Republic of Singapore

### First UPR Cycle (6 May 2011)

**National Report Filed:**<sup>1</sup> Singapore's national report for the first UPR was published on 2 February 2011. It did not mention HRDs or the LGBTIQ community. The report did note that Singapore "fully subscribes to the principles enshrined in the Universal Declaration of Human Rights [(UDHR)]."<sup>2</sup> The report also discussed Singaporean legislation that permits arbitrary detention to neutralise threats to national security.<sup>3</sup>

**Stakeholders Submissions Made:**<sup>4</sup> The summary of the 18 stakeholders' submissions was published on 21 February 2011. Stakeholders highlighted the prejudice LGBTIQ people faced seeking private sector employment or promotions, noting that there was no recourse due to a lack of legal protections.<sup>5</sup>

Stakeholders also noted that Singapore maintained criminal sanctions against sexual activity between consenting men and recommended that Singapore repeal laws in this regard.<sup>6</sup> They also recommended that Article 12(2) of Singapore's Constitution be amended to prohibit discrimination based on gender and sexuality.<sup>7</sup> Finally, stakeholders suggested that Singapore's laws allowing arbitrary detention threatened HRDs and effectively eliminated "all forms of dissent, free speech and free association and assembly."<sup>8</sup>

#### First UPR Cycle for Singapore: Recommendations Received

In its first UPR, held in May 2011, Singapore received the following recommendations which directly relate to the LGBTIQ community and LGBTIQ HRDs:

- Repeal or at least narrow the restrictions on public discourse on sensitive issues in order to ensure the full enjoyment of freedom of expression and freedom of peaceful assembly and association (Slovenia).
- Repeal legal provisions, including the Penal Code, criminalising sexual activity between consenting adults of the same sex (Slovenia, France).

<sup>1</sup> National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Singapore, U.N. Doc. A/HRC/WG.6/11/SGP/1, 2 February 2011, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/105/40/PDF/G1110540.pdf?OpenElement> (last visited 29 June 2017).

<sup>2</sup> First UPR cycle: *National Report*, Singapore, para. 33.

<sup>3</sup> First UPR cycle: *National Report*, Singapore, paras. 126, 128-130.

<sup>4</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Singapore*, U.N. Doc. A/HRC/WG.6/11/SGP/3, 21 February 2011, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/108/87/PDF/G1110887.pdf?OpenElement> (last visited 29 June 2017).

<sup>5</sup> First UPR cycle: *Stakeholders' Summary*, Singapore, para. 16.

<sup>6</sup> First UPR cycle: *Stakeholders' Summary*, Singapore, para. 28.

<sup>7</sup> First UPR cycle: *Stakeholders' Summary*, Singapore, para. 17.

<sup>8</sup> First UPR cycle: *Stakeholders' Summary*, Singapore, para. 23.

- Put a stop to caning as a form of punishment and repeal all laws providing for this punishment (Czech Republic); put an end in practice to all forms of corporal punishment and derogate the laws allowing for this practice (France).
- Declare an immediate moratorium on executions with the aim of abolishing the death penalty (Finland, France, Switzerland, Czech Republic, Canada, United Kingdom, Slovenia).
- Review the de facto ban on peaceful public demonstrations, the use of anti-defamation laws, and the registration process for civil society and associations, to ensure that such laws, as adopted and enforced, are consistent with international human rights guarantees of the rights to freedom of expression, freedom of peaceful assembly, freedom of association (Canada).
- Abolish the penal law on defamation and ensure, through legislative reform and political change, that freedom of expression as well as freedom of association and peaceful assembly are guaranteed to all inhabitants, citizens or not, of the country (Switzerland).
- Consider developing further the legal and institutional framework with respect to the promotion and protection of human rights in the country (Malaysia, Jordan).

**Source:** *Report of the Working Group on the Universal Periodic Review: Singapore*, U.N. Doc. A/HRC/18/11, 11 July 2011, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/145/27/PDF/G1114527.pdf?OpenElement> (last visited 29 June 2017).

**Comments Received; Response to Recommendations:** During the UPR Interactive Dialogue, Singapore received a specific comment from France welcoming Singapore's decision to no longer apply the provision of the Penal Code criminalising consensual sexual activity between men. At the same time, France expressed its "regret[...] that caning was still considered a [valid] punishment."<sup>9</sup>

In response to these comments and related comments from various other States,<sup>10</sup> Singapore advised that individuals were free to pursue their lives. However, it noted that its parliament had debated decriminalising sexual activity between men and had decided to maintain the current approach.<sup>11</sup> In effect, therefore, Singapore chose not to support recommendations to decriminalise sexual activity between men.<sup>12</sup>

Equally, recommendations to abolish the death penalty and end corporal punishment failed to secure Singapore's support.<sup>13</sup> Likewise, Singapore noted that it considered that

<sup>9</sup> First UPR cycle: *Report of the Working Group*, Singapore, para. 72.

<sup>10</sup> First UPR cycle: *Report of the Working Group*, Singapore, paras. 108, 161.

<sup>11</sup> First UPR cycle: *Report of the Working Group*, Singapore, para. 82.

<sup>12</sup> First UPR cycle: *Report of the Working Group*, Singapore, para. 97.12.

<sup>13</sup> First UPR cycle: *Report of the Working Group*, Singapore, paras. 97.1-97.7.

recommendations to improve protections of the freedoms of expression and assembly were "based on incorrect assumptions or premises"<sup>14</sup> and accordingly did not support them either.

However, Singapore did accept the recommendation from Slovenia to repeal restrictions on public discourse to ensure the full enjoyment of freedom of expression and of peaceful assembly and association.<sup>15</sup> In this regard, Singapore stated that:

[a]s a multi-cultural society, ethnicity, language, race, and religion are emotive issues and have the potential to cause friction and divide Singaporeans. Boundaries therefore have to be set, within the limits authorised by the Singapore Constitution, to ensure that those who engage in public discourse on such issues act responsibly and to minimise the risk of these issues sparking off wider social hostilities, including violence.<sup>16</sup>

Singapore also accepted recommendations from Malaysia and Jordan to further develop the State's legal and institutional framework with respect to human rights.<sup>17</sup>

## Second UPR Cycle (27 January 2016)

**National Report Filed:**<sup>18</sup> Singapore's national report for the second UPR was published on 28 October 2015. While it did not explicitly mention HRDs, the report did include a specific section on the LGBTIQ community. The report advised that Section 377A of the Penal Code, which criminalises sexual activity between men, was retained due to parliamentary debate and petitions by civil society.<sup>19</sup> Despite retaining the section, however, the report explained that the government did not proactively enforce it, and that in practice, all of Singapore's citizens were "free to lead their lives and pursue their activities in their private space without fear of violence or personal insecurity."<sup>20</sup>

As to discrimination, Singapore's report claimed that "Members of the LGBT community are also not discriminated against in schools or the workplace. The Government does not discriminate against persons seeking a job in the civil service on the basis of their sexual orientation."<sup>21</sup> Finally, Singapore emphasised that on LGBTIQ issues, "each country should be allowed to deal with such sensitive issues in its own way, taking into account its evolving social

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<sup>14</sup> First UPR cycle: *Report of the Working Group*, Singapore, para. 99.

<sup>15</sup> First UPR cycle: *Report of the Working Group*, Singapore, para. 96.35.

<sup>16</sup> *Report of the Working Group on the Universal Periodic Review: Singapore, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/18/11/Add.1, 11 July 2011, para. 11, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/144/50/PDF/G1114450.pdf?OpenElement> (last visited 29 June 2017).

<sup>17</sup> First UPR cycle: *Report of the Working Group*, Singapore, para. 94.25.

<sup>18</sup> *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Singapore*, U.N. Doc. A/HRC/WG.6/24/SGP/1, 28 October 2015, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/245/91/PDF/G1524591.pdf?OpenElement> (last visited 29 June 2017).

<sup>19</sup> Second UPR cycle: *National Report*, Singapore, para. 111.

<sup>20</sup> Second UPR cycle: *National Report*, Singapore, para. 112.

<sup>21</sup> Second UPR cycle: *National Report*, Singapore, para. 112.

and cultural context."<sup>22</sup> It explained that its approach sought to accommodate the sensitivities of its diverse communities so that they could co-exist harmoniously.<sup>23</sup>

**Stakeholders Submissions Made:**<sup>24</sup> The summary of the 22 stakeholders' submissions was published on 6 November 2015. Stakeholders explicitly discussed the LGBTIQ community, LGBTIQ HRDs and HRDs generally. They noted Singapore's failure to introduce laws prohibiting discrimination based on sexual orientation,<sup>25</sup> and reported that LGBTIQ people faced obstacles seeking employment in the civil service or discrimination while working in State departments.<sup>26</sup> More generally, stakeholders "noted reports of workplace bullying, prejudice, harassment, blackmail and intimidation."<sup>27</sup> Stakeholders recommended that Singapore eliminate all policies actively discriminating against LGBTIQ people, in particular those requiring people to declare their sexual orientation in public and private fields.<sup>28</sup>

Echoing stakeholder submissions for the first UPR, stakeholders in the second UPR continued to recommend that laws criminalising consensual sexual activity between men be repealed.<sup>29</sup> Stakeholders also highlighted media censorship laws that they alleged "created a skewed portrayal of LGBTI individuals in local and mainstream media", together with a 24-hour takedown requirement introduced for "material that advocates homosexuality or lesbianism" on popular websites.<sup>30</sup> Finally, stakeholders recommended that Singapore "take all necessary measures to allow broadcasting of LGBTI content without any kind of restrictions in all media, including print media, television, film and web broadcasting."<sup>31</sup>

### **Second UPR Cycle for Singapore: Recommendations Received**

In its second UPR, held in January 2016, Singapore received the following recommendations directly relevant to LGBTIQ people and the freedoms of expression, association and assembly:

- Repeal laws criminalising homosexuality, especially Section 377A of the Penal Code (Norway, Slovenia, Spain, Sweden, United Kingdom, United States, Austria, Czech Republic, France, Greece) and laws which discriminate against LGBTI persons (Brazil, Czech Republic).

<sup>22</sup> Second UPR cycle: *National Report*, Singapore, para. 113.

<sup>23</sup> Second UPR cycle: *National Report*, Singapore, para. 113.

<sup>24</sup> *Summary of Stakeholders' submissions prepared by the Office of the United Nations High Commissioner for Human Rights: Singapore*, U.N. Doc. A/HRC/WG.6/24/SGP/3, 6 November 2015, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/252/06/PDF/G1525206.pdf?OpenElement> (last visited 29 June 2017).

<sup>25</sup> Second UPR cycle: *Stakeholders' Summary*, Singapore, para. 4.

<sup>26</sup> Second UPR cycle: *Stakeholders' Summary*, Singapore, para. 5.

<sup>27</sup> Second UPR cycle: *Stakeholders' Summary*, Singapore, para. 58.

<sup>28</sup> Second UPR cycle: *Stakeholders' Summary*, Singapore, para. 5.

<sup>29</sup> Second UPR cycle: *Stakeholders' Summary*, Singapore, para. 33.

<sup>30</sup> Second UPR cycle: *Stakeholders' Summary*, Singapore, para. 48.

<sup>31</sup> Second UPR cycle: *Stakeholders' Summary*, Singapore, para. 48.

- Abolish corporal punishment as a legal penalty (Sweden, Switzerland, France, New Zealand).
- Establish a moratorium on the death penalty (Spain, Netherlands, Sierra Leone, Slovenia, Finland, Holy See, Honduras, South Africa, Norway, Portugal, Switzerland, Italy).
- Enact comprehensive legislation prohibiting discrimination in employment on the basis of sex, race, ethnicity, religion, age, sexual orientation, gender identity and expression, marital status or disability (Canada).
- Ensure freedom of assembly and association, freedom of opinion and expression, including on the Internet, and protect freedom of the press (France, Mexico, Costa Rica, New Zealand).
- Decriminalise defamation and make it a civil offence in accordance with international standards, and review the registration process for civil society and associations to ensure the fulfilment of their human rights (Belgium, Canada).
- Review existing legislation to enhance the exercise of the right to freedom of expression, association and peaceful assembly (Italy, Czech Republic, Latvia, Japan, Ireland).
- Remove discriminatory media guidelines to provide a more balanced representation of LGBTI persons (Canada).
- Establish a national human rights institution in accordance with the Paris Principles (Costa Rica, Nepal, Republic of Korea, Timor-Leste, Malaysia).

**Source:** *Report of the Working Group on the Universal Periodic Review: Singapore*, U.N. Doc. A/HRC/32/17, 15 April 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/078/42/PDF/G1607842.pdf?OpenElement> (last visited 29 June 2017).

**Comments Received; Response to Recommendations:** Singapore received specific comments from delegations during the UPR Interactive Dialogue concerning, among other things, human rights of the LGBTIQ community<sup>32</sup> and the decriminalisation of sexual activity between men.<sup>33</sup> Singapore acknowledged recommendations directly mentioning the LGBTIQ community; reiterated that LGBTIQ people were part of society and free to live their lives; and indicated that the topic was sensitive given the conservative nature of Singaporean society.<sup>34</sup> Singapore also reiterated that laws criminalising homosexuality were not actively enforced.<sup>35</sup>

Singapore noted recommendations regarding the death penalty, explaining that “no civilized society glorified in the taking of lives. Singapore applied capital punishment to deter the most

<sup>32</sup> Second UPR cycle: *Report of the Working Group*, Singapore, paras. 18, 50.

<sup>33</sup> Second UPR cycle: *Report of the Working Group*, Singapore, paras. 37, 108, 161.

<sup>34</sup> Second UPR cycle: *Report of the Working Group*, Singapore, paras. 76-77.

<sup>35</sup> Second UPR cycle: *Report of the Working Group*, Singapore, para. 77.

serious crimes such as murder and drug trafficking."<sup>36</sup> It offered similar reasoning for its prohibition of corporal punishment, explaining that "the application of corporal punishment was guided by necessity and proportionality. There were absolute limits on the number of strokes, and it was administered under highly regulated conditions."<sup>37</sup>

During the UPR Interactive Dialogue, Singapore also received comments on its laws prohibiting freedoms of speech, media, expression and assembly.<sup>38</sup> Singapore expressed its support for the freedoms of assembly, speech and expression; indeed, Singapore accepted the recommendation promoting the freedom of expression. At the same time, Singapore stressed that there must be safeguards in place against abuse of such rights.<sup>39</sup>

On defamation, Singapore noted without supporting the recommendation<sup>40</sup> about defamation. Singapore indicated in response that "Singapore's Societies Act and laws on defamation are already consistent with the rights to freedom of expression, association and peaceful assembly, as enshrined in the Singapore Constitution."<sup>41</sup>

Finally, Singapore did not support the recommendation which proposed that it create a national human rights institution in accordance with the Paris Principles. Singapore explained that it had already "put in place interlocking legislation, institutions and mechanisms that allow [us] to promote and protect the human rights of all Singaporeans."<sup>42</sup>

## Situation of the LGBTIQ Community and its HRDs in Singapore

### Freedom of Opinion and Expression

**Censorship in the Media:** Singapore's media censorship laws are currently applied in a way that limits its citizens' freedom of opinion and expression on LGBTIQ-related issues. For example, in 2011, Singapore's Media Development Authority imposed an R21 rating on a documentary produced by the International Gay and Lesbian Human Rights Commission.<sup>43</sup> The documentary focused on issues LGBTIQ people in Asia face and explained how the Yogyakarta Principles were a tool LGBTIQ HRDs could use in advocating for their rights,<sup>44</sup> and

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<sup>36</sup> Second UPR cycle: *Report of the Working Group*, Singapore, paras. 61-63, 166.56-166.58.

<sup>37</sup> Second UPR cycle: *Report of the Working Group*, Singapore, paras. 64, 166.68-166.78.

<sup>38</sup> Second UPR cycle: *Report of the Working Group*, Singapore, paras. 49, 98.

<sup>39</sup> Second UPR cycle: *Report of the Working Group*, Singapore, paras. 67, 72; *Report of the Working Group on the Universal Periodic Review: Singapore, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/32/17/Add.1, 13 June 2016, paras. 4-50, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/117/87/PDF/G1611787.pdf?OpenElement> (last visited 4 July 2017).

<sup>40</sup> This is standard diplomatic language commonly used by States under review to declare that they do not accept a given recommendation.

<sup>41</sup> Second UPR cycle: *Report of the Working Group*, Singapore, paras. 48, 166.86, 166.92.

<sup>42</sup> Second UPR cycle: *Report of the Working Group*, Singapore, para. 34.

<sup>43</sup> "Human Rights Reports for 2011: Singapore", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2012, p. 25, available at <https://www.state.gov/documents/organization/186516.pdf> (last visited 3 July 2017).

<sup>44</sup> "Human Rights Reports for 2011: Singapore", U.S. Department of State, 2012, p. 25.



an R21 rating limited the documentary's screening locations, audience, release on home video formats and advertising on television.<sup>45</sup>

In May 2015, the Media Development Authority ordered TV and radio broadcasters not to air singer Jolin Tsai's song "We're All Different, Yet The Same" as it contained lyrics on homosexuality.<sup>46</sup> Similarly, the Media Development Authority continues to censor LGBTIQ themes in films and television shows, stating that LGBTIQ themes are only allowed on television "as long as the presentation does not justify, promote, or glamorize such a lifestyle."<sup>47</sup>

The approach of Singapore's Media Development Authority to LGBTIQ issues highlights the relevance of reforms recommended during both the first and second UPRs for Singapore. In particular, its actions contrast with Slovenia's first UPR recommendation to narrow the restrictions on public discourse on sensitive issues and ensure the full enjoyment of freedom of expression, which Singapore accepted. These actions also contrast with Canada's second UPR recommendation for Singapore to remove discriminatory media guidelines to provide a more balanced representation of LGBTIQ persons which Singapore merely noted, on the basis that "LGBTI content is permitted so long as it meets the current media guidelines, which are revised periodically in accordance with societal values."<sup>48</sup>

In this regard, it is noteworthy that Singapore supported Slovenia's recommendation in the first UPR but did not support Canada's similar recommendation in the second UPR. This would

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<sup>45</sup> "Human Rights Reports for 2011: Singapore", U.S. Department of State, 2012, p. 25. *For more information, see* "Film Classification Guidelines", IMDA, Singapore Government, 27 February 2017, available at <https://www.imda.gov.sg/~media/imda/files/regulation%20licensing%20and%20consultations/codes%20of%20practice%20and%20guidelines/acts%20codes/10%20classificationguidelines15072011.pdf?la=en> (last visited 29 June 2017).

The R21 rating is from the Singapore Movies Classification and corresponds to the restriction "to persons 21 years and above." This classification justifies a R21 restriction as follows: "depiction of intense horror, and sustained threat or menace may be permitted if contextually justified. Portrayals of extreme abhorrent activity that may offend and cause great discomfort may be disallowed."

<sup>46</sup> "World Report 2016: Events of 2015", Human Rights Watch, 2016, p. 504, available at [https://www.hrw.org/sites/default/files/world\\_report\\_download/wr2016\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf) (last visited 3 July 2017).

<sup>47</sup> "Human Rights Reports for 2012: Singapore", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2013, p. 26, available at <https://www.state.gov/documents/organization/204446.pdf> (last visited 3 July 2017); "Human Rights Reports for 2013: Singapore", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2014, p. 28, available at <https://www.state.gov/documents/organization/220439.pdf> (last visited 3 July 2017); "Human Rights Reports for 2014: Singapore", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2015, p. 27, available at <https://www.state.gov/documents/organization/236686.pdf> (last visited 3 July 2017); "Human Rights Reports for 2015: Singapore", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2016, p. 26, available at <https://www.state.gov/documents/organization/253009.pdf> (last visited 3 July 2017); "Human Rights Reports for 2016: Singapore", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2017, p. 26, available at <https://www.state.gov/documents/organization/265582.pdf> (last visited 3 July 2017).

<sup>48</sup> *Report of the Working Group on the Universal Periodic Review: Singapore, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/32/17/Add.1, 13 June 2016, para. 46, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/117/87/PDF/G1611787.pdf?OpenElement> (last visited 4 July 2017).

appear to indicate that Singapore's position on freedom of opinion and expression has become increasingly restrictive over the course of the UPR process.

**Criminal Sanctions:** In the criminal law sphere, in 2013, Singapore charged the blogger and HRD Alex Au Wai Pang in relation to a commentary he posted online. Pang was alleged to have "scandalised" the judiciary in his online commentary by implying that the Supreme Court delayed hearing dates on a constitutional challenge to section 377A of Singapore's Penal Code that criminalises homosexual sexual conduct for improper reasons.<sup>49</sup> He was ultimately convicted on 22 January 2015 and sentenced with an \$8,000 fine.<sup>50</sup>

Both the Office of the United Nations (UN) High Commissioner for Human Rights<sup>51</sup> (OHCHR) and the UN Special Rapporteur on the situation of human rights defenders expressed concern about the charges brought against Alex Au Wai Pang. In March 2015, the Special Rapporteur, Michel Forst, suggested that the charges:

could have a negative impact on the possibility of public discussions on critical human rights issues as well as on the operational space of the human rights defenders to exercise their legitimate right to freedom of opinion and expression without fear, intimidation and interference.<sup>52</sup>

Despite the attention paid to Pang's case, in November 2015, the Singapore Court of Appeals heard Pang's appeal for his conviction and dismissed his claim. The superior Court agreed with the lower Court and dismissed the appeal with costs.<sup>53</sup>

During its first UPR, Singapore did not support a recommendation from Switzerland which called for legislative reform and political change to ensure the freedom of expression of Singapore's citizens. However, during its second UPR, Singapore did accept a recommendation from France to ensure freedom of assembly and association, freedom of opinion and expression, including on the Internet, and protect freedom of the press<sup>54</sup> while stressing the need to safeguard against abuse of such rights.<sup>55</sup> It is plausible that Pang's high-profile case, which took place between the first and second UPRs, may have contributed to

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<sup>49</sup> "Singapore: court convicts activist blogger for contempt", Asian Human Rights Defenders, 23 January 2015, available at <https://asianhrds.forum-asia.org/?events-singapore-court-convicts-activist-blogger-for-contempt#> (last visited 3 July 2017).

<sup>50</sup> "Singapore: court convicts activist blogger for contempt", Asian Human Rights Defenders, 23 January 2015.

<sup>51</sup> "OHCHR Internal Communication - Reference: UA G/SO 214 (67-17) G/SO 214 (107-9)", OHCHR, 12 December 2013, available at [https://spdb.ohchr.org/hrdb/24th/public\\_-\\_UA\\_Singapore\\_12.12.13\\_\(4.2013\).pdf](https://spdb.ohchr.org/hrdb/24th/public_-_UA_Singapore_12.12.13_(4.2013).pdf) (last visited 3 July 2017).

<sup>52</sup> Michel Forst, *Report of the Special Rapporteur on the situation of human rights defenders, Addendum*, U.N. Doc. A/HRC/28/63/Add.1, 4 March 2015, para. 323, available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx> (last visited 3 July 2017).

<sup>53</sup> *Au Wai Pang v Attorney-General*, 2015, SGCA 61. Also available at <http://www.singaporelaw.sg/sglaw/laws-of-singapore/case-law/free-law/court-of-appeal-judgments/18277-au-wai-pang-v-attorney-general> (last visited 5 July 2017).

<sup>54</sup> Second UPR cycle: *Report of the Working Group*, Singapore, para. 166.201.

<sup>55</sup> Second UPR cycle: *Report of the Working Group, Addendum*, Singapore, para. 47.

Singapore's decision to accept the second UPR recommendation on freedom of expression, yet at the same time highlighting possible abuses of the freedom.

**Threats to the LGBTIQ Community:** On 4 June 2016, a Singaporean man, Bryan Lim, posted a comment on the Facebook Group "We are against Pinkdot in Singapore" which resurfaced after the mass shooting in Orlando.<sup>56</sup> The comment stated "I am a Singaporean citizen. I am an NSman. I am a father. And I swore to protect my nation. Give me the permission to open fire. I would like to see these £@€\$^\*s die for their causes."<sup>57</sup> Facebook users lodged police reports against the man.<sup>58</sup> Lim apologised "for the misunderstanding", claiming that he "did not mean anyone" and instead meant to direct his comment at "foreign intervention in local matters."<sup>59</sup>

On 30 June 2016, Bryan Lim was charged by the Singaporean police for making an electronic record containing an incitement to violence.<sup>60</sup> He was ultimately fined \$3,500 on 4 November 2016 after pleading guilty to a reduced charge of making a threatening, abusive or insulting communication under the Protection from Harassment Act.<sup>61</sup>

## Freedom of Assembly and the Right to Freely Participate in the Cultural Life of the Community

**Pride Celebrations:** In 2009, Singapore's first public celebration of its LGBTIQ community was organised by Pink Dot SG.<sup>62</sup> The celebration is now hosted every year in Hong Lim Park, Singapore's only public space created solely for public protest and/or free speech. Pink Dot was created to promote openness, understanding, and tolerance of the LGBTIQ community in Singapore.<sup>63</sup> Pink Dot has continued to expand since its formation in 2009. In 2009, Pink Dot hosted 1,000-2,500 attendees,<sup>64</sup> expanding to over 28,000 in 2015.<sup>65</sup> Most recently, approximately 20,000 people attended Pink Dot in 2017 despite the Singaporean government

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<sup>56</sup> "Police investigating online threat by Facebook user who wanted to 'open fire'", Channel NewsAsia, 14 June 2016, available at <http://www.channelnewsasia.com/news/singapore/police-investigating/2870236.html> (last visited 3 July 2017).

<sup>57</sup> Kok Xing Hui & Seow Bei Yi, "Singapore netizen Bryan Lim apologises over LGBT 'open fire' comment", The Straits Times, 15 June 2016, available at <http://www.straitstimes.com/singapore/spore-netizen-apologises-over-open-fire-comment> (last visited 3 July 2017).

<sup>58</sup> Kok Xing Hui & Seow Bei Yi, "Singapore netizen Bryan Lim apologises over LGBT 'open fire' comment", The Straits Times, 15 June 2016.

<sup>59</sup> Kok Xing Hui & Seow Bei Yi, "Singapore netizen Bryan Lim apologises over LGBT 'open fire' comment", The Straits Times, 15 June 2016.

<sup>60</sup> Elena Chong, "Singapore netizen Bryan Lim charged over LGBT 'open fire' Facebook comment", The Straits Times, 30 June 2016, available at <http://www.straitstimes.com/singapore/courts-crime/singapore-netizen-bryan-lim-charged-over-lgbt-open-fire-facebook-comment> (last visited 3 July 2017).

<sup>61</sup> Kok Xing Hui, "Man fined \$3,500 over 'open fire' comment online", The Straits Times, 4 November 2016, available at <http://www.straitstimes.com/singapore/courts-crime/man-fined-3500-over-open-fire-comment-online> (last visited 3 July 2017).

<sup>62</sup> Sharanjit Leyl, "Singapore gays in first public rally", BBC News, 17 May 2009, available at <http://news.bbc.co.uk/2/hi/asia-pacific/8054402.stm> (last visited 3 July 2017).

<sup>63</sup> "About Pink Dot SG", Pink Dot SG, 2016, available at <http://pinkdot.sg/about-pink-dot/> (last visited 3 July 2017).

<sup>64</sup> Sharanjit Leyl, "Singapore gays in first public rally", 17 May 2009.

<sup>65</sup> Regina Marie Lee, "'Traditional values' wear white campaign returning on Pink Dot weekend", Today Online, 23 May 2016, available at <http://www.todayonline.com/singapore/network-churches-revives-campaign-wear-white-pink-dot-weekend> (last visited 3 July 2017).

imposing new restrictions permitting only Singaporean citizens or permanent residents to join the celebration.<sup>66</sup>

In 2014, Islamic religious teacher Noor Deros launched a "Wear White" campaign protesting against homosexuality and encouraging Muslims to wear white on the day of the Pink Dot event.<sup>67</sup> The senior pastor of Singapore's Faith Community Baptist Church, Lawrence Khong, publicly supported the campaign.<sup>68</sup> The "Wear White" campaign continued in 2015.<sup>69</sup> In 2016, Lawrence Khong led the campaign, encouraging his parishioners to wear white to coincide with the Pink Dot event,<sup>70</sup> whereas Noor Deros announced that it "has since moved on to focus on educational programmes, and has no plans to carry out the campaign."<sup>71</sup>

In August 2014, the police rejected an application for a LGBTIQ pride celebration,<sup>72</sup> Pink Run, to be held along Singapore's Marina Promenade Park. The police held that the "purpose of the event as stated by the applicant is related to LGBT advocacy, which remains a socially divisive issue. The application has been rejected 'in the interest of public order'."<sup>73</sup> Amnesty International reported that in 2014, HRDs in Singapore expressed concern "about the shrinking space for public discussion of issues such as freedom of expression" and LGBTIQ rights.<sup>74</sup>

In 2015, the Media Development Authority banned a Pink Dot advertisement from being shown in movie theatres, holding that it was "not in the public interest to allow cinema halls to carry advertising on LGBT issues."<sup>75</sup>

In 2016, Pink Dot received sponsorship from 18 corporations.<sup>76</sup> This doubled the number of the event's sponsors from 2015.<sup>77</sup> Sponsors included Facebook, Apple, Google, Barclays, J.P.

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<sup>66</sup> Sophie Jeong & Spencer Feingold, "Singaporeans rally for gay pride amid ban on foreigners", CNN, 1 July 2017, available at <http://edition.cnn.com/2017/07/01/asia/singapore-gay-pride-rally/index.html> (last visited 3 July 2017).

<sup>67</sup> Kok Xing Hui, "Pink Dot organisers to deploy security personnel", Today Online, 26 June 2014, available at <http://www.todayonline.com/singapore/pink-dot-organisers-deploy-security-personnel> (last visited 3 July 2017).

<sup>68</sup> Kok Xing Hui, "Pink Dot organisers to deploy security personnel", Today Online, 26 June 2014.

<sup>69</sup> "Freedom on the Net: Singapore", Freedom House, 2015, p. 9, available at [https://freedomhouse.org/sites/default/files/resources/FOTN%202015\\_Singapore.pdf](https://freedomhouse.org/sites/default/files/resources/FOTN%202015_Singapore.pdf) (last visited 3 July 2017).

<sup>70</sup> Ng Yi Shu, "Pastor Lawrence Khong: 'We will wear white until the pink is gone'", Mothership, 14 June 2015, available at <http://mothership.sg/2015/06/pastor-lawrence-khong-we-will-wear-white-until-the-pink-is-gone/> (last visited 3 July 2017).

<sup>71</sup> Regina Marie Lee, "'Traditional values' wear white campaign", Today Online, 23 May 2016.

<sup>72</sup> "World Report 2015: Events of 2014", Human Rights Watch, 2015, p. 480, available at [https://www.hrw.org/sites/default/files/world\\_report\\_download/wr2015\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/wr2015_web.pdf) (last visited 3 July 2017).

<sup>73</sup> Channel News Asia, "Pink Run permit rejected in interest of public order: Police", Today Online, 14 August 2014, available at <http://www.todayonline.com/singapore/pink-run-permit-rejected-interest-public-order-police> (last visited 3 July 2017).

<sup>74</sup> "Amnesty International Report 2014/15: The State of the World's Human Rights", Amnesty International, 2015, p. 325, available at [https://www.amnestyusa.org/pdfs/AIR15\\_English.PDF](https://www.amnestyusa.org/pdfs/AIR15_English.PDF) (last visited 3 July 2017).

<sup>75</sup> "World Report 2016: Events of 2015", Human Rights Watch, p. 505.

<sup>76</sup> Victoria Ho, "Tens of thousands of Singaporeans blanket a field in pink for pride", Mashable Australia, 6 June 2016.

<sup>77</sup> Victoria Ho, "Tens of thousands of Singaporeans blanket a field in pink for pride", Mashable Australia, 6 June 2016.

Morgan, and Goldman Sachs, among others.<sup>78</sup> Singapore's Ministry of Home Affairs warned multinational corporations that they should not sponsor annual gay rights events, and that it would "take steps to make it clear that foreign entities should not fund, support or influence such events."<sup>79</sup> The Ministry explained that "[t]hese are political, social or moral choices for Singaporeans to decide for ourselves" and that it would "take steps to make it clear that foreign entities should not fund, support or influence such events."<sup>80</sup> Indeed, in 2017, the Singaporean government banned all international corporations from funding the event. However, Pink Dot instead secured funding from over 120 local companies.<sup>81</sup>

**Orlando Solidarity:** On 14 June 2016, a vigil was held in Hong Lim Park to express solidarity with the victims of the mass shooting at a gay club in Orlando in the United States of America (USA).<sup>82</sup> Approximately 400 people attended the vigil.<sup>83</sup> Singapore's Home Affairs and Law Minister, Kasiswathan Shanmugam, publicly denounced the shooting, stating that:

Here, the government will act decisively if there is threat of violence against anyone or any group [...] The Government's duty [...] is to protect everyone. Their race, their religion, their sexual orientation, they are not relevant in terms of the Government's duty to protect.<sup>84</sup>

Singapore's LGBTIQ community groups applauded Shanmugam's comments in a joint statement. However, they stressed that "the LGBT community here remains vulnerable from the lack of actual laws protecting us against discrimination and hate. Beyond physical violence, the LGBT community continues to have to deal with psychological and social violence."<sup>85</sup>

## Right to Equality and Non-Discrimination

LGBTIQ people in Singapore continue to be exposed to discrimination and ill-treatment. The State continues to lack any anti-discrimination laws in any field. Thus, the LGBTIQ community

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<sup>78</sup> Simon Lewis, "Singapore Has Told Foreign Companies to Stop Sponsoring an Annual LGBT Event", Time, 8 June 2016, available at <http://time.com/4360973/pink-dot-singapore-facebook-google-apple/> (last visited 3 July 2017).

<sup>79</sup> Simon Lewis, "Singapore Has Told Foreign Companies to Stop Sponsoring an Annual LGBT Event", Time, 8 June 2016.

<sup>80</sup> Simon Lewis, "Singapore Has Told Foreign Companies to Stop Sponsoring an Annual LGBT Event", Time, 8 June 2016.

<sup>81</sup> Sophie Jeong & Spencer Feingold, "Singaporeans rally for gay pride amid ban on foreigners", CNN, 1 July 2017, available at <http://edition.cnn.com/2017/07/01/asia/singapore-gay-pride-rally/index.html> (last visited 3 July 2017).

<sup>82</sup> "Singapore's Oppressed LGBTQ Community Galvanized After Orlando", NBC News, 14 June 2016, available at <http://www.nbcnews.com/feature/nbc-out/orlando-shooting-gives-lgbt-singaporeans-slight-opening-n592176> (last visited 3 July 2017).

<sup>83</sup> "400 people hold candlelight vigil for Orlando shooting victims at Hong Lim Park", AsiaOne, 14 June 2016, available at <http://news.asiaone.com/news/singapore/400-people-hold-candlelight-vigil-orlando-shooting-victims-hong-lim-park#sthash.TGbUHoNs.dpuf> (last visited 3 July 2017).

<sup>84</sup> Siau Ming En, "Govt 'will protect all, regardless of race, religion, sexual orientation'", Today, 14 June 2016, available at <http://www.todayonline.com/singapore/govts-duty-protect-all-singaporeans-threat-violence-regardless-race-religion-or-sexual> (last visited 3 July 2017).

<sup>85</sup> "Joint Statement: Hate Cannot Be Allowed to Take Root in Singapore", Pink Dot SG, 14 June 2016, available at <http://pinkdot.sg/joint-statement-hate-cannot-be-allowed-to-take-root-in-singapore/> (last visited 3 July 2017).

may face discrimination in relation to housing, employment and healthcare.<sup>86</sup> Moreover, with no legal marriage available to LGBTIQ couples, they cannot benefit from tax breaks and other laws from which heterosexual couples benefit. In general, Singaporean LGBTIQ persons face legal ambiguity in relation to issues ranging from discrimination to legally changing one's gender.<sup>87</sup>

## Conclusion

During its first and second UPR cycles, Singapore failed to support recommendations that would strengthen the protection and promotion of LGBTIQ rights in the State. These recommendations were to create anti-discrimination laws; repeal the death penalty or corporal punishment; and remove restrictions to freedoms of opinion and expression and restrictions on public discourse and the freedom of peaceful assembly. While Singapore accepted certain relevant recommendations, it has continually stressed both the need to balance such rights against their possible abuse and to take account of context, notably the conservatism of Singaporean society.

The situation facing Singapore's LGBTIQ community and HRDs working on LGBTIQ issues reflects the Singaporean government's current position. Although Singapore has permitted the staging of the high-profile LGBTIQ event Pink Dot, it has imposed increasing restrictions on the event. Likewise, Singapore has imposed stringent media restrictions on the dissemination of LGBTIQ-related ideas in the media and has not taken action to intervene and prevent the discrimination and harassment faced by LGBTIQ HRDs and the LGBTIQ community generally. As a result, LGBTIQ persons and HRDs remain vulnerable to censorship and discrimination in Singapore.

### Recommendations

In the lead-up to the third UPR review of Singapore in January/February 2021:

- CSOs should actively engage in monitoring the implementation of those recommendations Singapore accepted and/or noted during the first two UPR cycles so as to gather relevant data on the improvement of the human rights situation in the country and to report at the third UPR cycle.
- CSOs should continue documenting violations and abuses endured by LGBTIQ people and their defenders so as to provide recommending states and the relevant UN mechanisms with solid evidence-based information.

<sup>86</sup> Urooba Jamal, "LGBT Rights Falter in Singapore, Flourish in Socialist Vietnam", TeleSur, 25 June 2017, available at <http://www.telesurtv.net/english/news/LGBT-Rights-Falter-in-Singapore-Flourish-in-Socialist-Vietnam-20170625-0018.html> (last visited 4 July 2017).

<sup>87</sup> Urooba Jamal, "LGBT Rights Falter in Singapore, Flourish in Socialist Vietnam", TeleSur, 25 June 2017.

- CSOs and recommending States should emphasise the universality and benefit to Singapore of reforms such as the abolition of capital and corporal punishment, the decriminalisation of consensual sexual activity between men, the strengthening of protections for freedom of opinion and expression, assembly, and non-discrimination, and the establishment of a national human rights institution in accordance with the Paris Principles.
- CSOs and recommending States should work collaboratively to develop UPR recommendations for the third cycle that emphasise the universality and benefit to Singapore of such reforms.

# Singapore: LGBTIQ HRD Interview

Human Rights of LGBTIQ  
Communities and HRDs:  
Frontline Voices



**Benjamin Xue,  
Chief Engagement Officer,  
campaign.com, The Social  
Network #ForChange**

**How did you become involved in lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ) rights work?**

11 years ago, I started doing volunteer work with Action for AIDS [Acquired Immune Deficiency Syndrome] in Singapore. I was given a lot of counselling tasks for the younger ones, because I was still quite young 11 years ago. I saw a lot of young boys coming in for HIV [Human

Immunodeficiency Virus] testing and a lot of them did not have a good grasp of HIV knowledge, or whether it be about themselves or sexuality in general. This is pre-Tumblr age, pre-Facebook age, things were still pretty much Blogspot. Information was not readily available.

Young gay males only dealt with coming out when they came for HIV testing, and that was the only point of contact where they could get some form of sexuality education. I felt that was already one step too late — they were coming in for emergency cases. That led to me searching for a safe space for LGBT youth to congregate and discuss their sexuality. In 2005/2006, two other friends and I set up an LGBT youth support group, called "Young Out Here."<sup>696</sup>

**Do you consider yourself a human rights defender (HRD)?**

I did what I did because there was no one taking any action.

**What have been the biggest challenges you have faced in advocating for LGBTIQ rights?**

During the fifth or sixth run of the Young Out Here support group, the Ministry of Health asked us if we wanted funding and we said no, because we want the program to be

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<sup>696</sup> Young OUT Here (YOH), Website, available at <http://young-out-here.com/> (last visited 17 August 2017).



independent and we didn't want to answer to anyone else. For example, they were only interested in the young gay males, but did not include young female lesbians and trans people in the group, and our group is a mix of LGBT youths, so it wasn't just catered to young gay youths.

We decided very early that it was a mixed group and would not be separated into their identities. That made funding difficult. In terms of challenges, there were problems within the community too, as the community felt they were not really prepared. At that time, advocacy for LGBT communities was done only in relation to health issues (HIV/AIDS perspective) and the use of Internet to discuss about LGBT related issues was just beginning. Some people didn't like how structured it is, because we screened people before allowing them in the group, as we were trying to create a safe space.

**What have been the most successful strategies or techniques you have used to create positive change for Singaporean youth?**

For LGBT youth groups, especially, I think our strategy is a mixture of the group being safe. Safety comes from facilitators, the programmes, the participants, and that's something we kept hammering down because if the group is not safe, no one will come and no one will share, because a lot of them already feel ostracised at school and in

their families and that's something we didn't want to recreate.

Social media was also just coming up; a Facebook page was important to Young Out Here, so suddenly I had full groups for every run of Young Out Here. They ended up being a good source of support. Then Pink Dot<sup>697</sup> – an annual LGBT rally in Singapore – came up, so that added another perspective of pushing for safe spaces for LGBT people in all of Singapore. A lot of these factors helped push for acceptance of LGBT people and LGBT youth in particular.

**Is there anything in particular that has happened that has been difficult for you as an HRD?**

When I was in Young Out Here and Pink Dot, I was in the spotlight; not that I wanted it, but there were articles about me doing things, and because I was handling Pink Dot's social media for two years, there was a lot of online hate. And that has only come up more dramatically in the past three to four years, that kind of intense, organised online hate. Now the fact that LGBT are more out and visible, the pushback has been much more in the forefront. They are more organised now than ever, and it is foul.

It is mainly religiously driven. There is a campaign that was set up, the Wear White Campaign. But this campaign was originally set up as a peaceful demonstration against Pink Dot, which I am all for, because you need to have that opposition to have a greater depth of conversation. But a lot of

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<sup>697</sup> "Supporting the freedom to love", Pink Dot SG, Website, available at <https://pinkdot.sg/> (last visited 17 August 2017).

people took it one step further, as hate messages were sent to members of Pink Dot.

**Do you feel that LGBTIQ people are safer now in Singapore?**

As far as I know, gender identity/sexuality-based harassment is not frequent in Singapore. There are episodes of bullying towards LGBTIQ youth at school, but the Ministry of Education rarely documents them. Transgender persons, in general, are the ones who endure more difficulties.

**Does your government do enough to protect LGBTIQ rights? Does civil society?**

No. I think the government is not capable enough to handle nuanced issues like this. They are not willing to put their foot forward and say they're going to lead on this issue. LGBT as a term has only been used very recently, it only came up in the past four to five years, so in public consciousness, our government thinks we are not ready to legalise same-sex marriage or take away Section 377A of the Penal Code. They are making this decision based on what they think is good for us. That has always been the sore point.

Official language has started to change though, (for example the government has stopped using the word "homosexual"), but a lot still needs to be done. Particularly, the government should do more research concerning LGBTIQ issues and, based on that, implement more policies to protect our rights.

Civil society has always been supportive of LGBT rights, more or less. I think it's a matter

of, us in the LGBT community, being more inclusive of other causes because it's often been LGBT rights and 'other'.

**Does civil society know how to use the Universal Periodic Review (UPR) recommendations and comments for advocacy in Singapore? Do you think the UPRs are an effective tool for human rights advocacy?**

Right now, no. Having well trained people on the UPR process takes time. The same way the UN [United Nations] is trying to force the Sustainable Development Goals on the developing world, the same thing is with the UPR. The fact that human rights as a concept is so foreign to Singaporeans, using the UPRs' terminology does not sit right with Singaporeans. They ask, 'why are we conforming?'

It's tough — whenever we handle a report for UN Women [United Nations Entity for Gender Equality and the Empowerment of Women], or CEDAW [the Committee on the Elimination of Discrimination against Women], or the UPR, it's really difficult as there isn't a systematic tracking of all these reports that come in. So in terms of how the UPR actually helps civil society in Singapore, I would say very little.

**What gives you hope when looking to the future of LGBTIQ rights in Singapore?**

In the short term, Pink Dot is still serving a good purpose. I think there needs to be a lot more local collaboration, between civil society groups, as that is the only way we can talk about real bread and butter issues when it comes to LGBT lives. The younger

ones are definitely coming out a lot more. There are a lot more LGBT university groups. I'm hopeful the younger ones are the ones pushing for change.

**What are the next steps for LGBTIQ rights and HRDs in Singapore?**

Over the past ten years, LGBT rights have really received great amplification, whether it's due to social media, people coming out, companies supporting LGBT rights, having events like Pink Dot — this visible stuff is a lot more prevalent and has helped to push the conversation forward.

Now, I think it's about how we layer that conversation and make sure that people who don't fall within our own 'boxes' of the

LGBTQ circle still feel included. Because there are asexuals and bisexuals coming out a lot more now, so it cannot be a generalisation of the community. Building a nuanced conversation around LGBT rights in Singapore will be tough, and I think it's going to take a bit longer, but be more inclusive.

**Would you suggest any way forward to the government?**

I really believe the government should adopt a more inclusive approach when it comes to LGBTIQ rights. It should start thinking about a road map, a plan to build an inclusive approach to LGBTIQ communities, starting by repealing Section 377A of the Penal Code that still criminalises same-sex relationships.

# Thailand: Country Profile

## Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

### Introduction

#### UPR Cycles

**First UPR Cycle:** 5 October 2011

**Second UPR Cycle:** 11 May 2016

**Third UPR Cycle:** April/May 2021

Issues related to the lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) community and human rights defenders (**HRDs**) were raised during both the Kingdom of Thailand's (**Thailand**) first and second Universal Periodic Review (**UPR**) cycles. Thailand accepted many UPR recommendations relating to LGBTIQ issues and

HRDs, combating discrimination and supporting human rights. At the same time, it has often refrained from fully accepting recommendations related to freedoms of expression and opinion or freedom of assembly.

As this Country Profile presents, Thailand offers its LGBTIQ community and HRDs working on LGBTIQ issues considerable space to exercise freedoms of opinion, expression, association and assembly. The International Lesbian and Gay Association (**ILGA**) has hosted high-profile events in Thailand with the participation of the Thai authorities, and numerous LGBTIQ celebrations have been staged without incident. Moreover, since the 2014 military-led *coup d'état* seizing control of Thailand's government, the ruling military junta has introduced the Gender Equality Act. The Act is a national non-discrimination law designed to protect individuals against discrimination on the grounds of gender expression, and while it has been criticised by civil society for its possible loopholes, the Act has also been heralded as being the first of its kind in Southeast Asia.

There have also been a number of concerning developments. For example, the military junta did not take action over a column published in a newspaper threatening to gang-rape an LGBTIQ HRD. Thammasat University denied the application of a renowned LGBTIQ activist to become a permanent lecturer, apparently on the sole

"The [UPR] recommendations didn't talk much about gender identity and sexual orientation. But I think it is very good when we activists or those affected by the issues get together and draft issues affecting them, and discuss what is happening on the ground. It is really useful to have workshops to do this and to make the people understand where there are problems in society."

**Kath Khangpiboon,**  
**Founder, Thai Transgender Alliance**

basis of a social media post. In addition, although there had been talk of the new junta-introduced Constitution recognising and protecting a third gender and prohibiting discrimination on the basis of sexual orientation, neither provision was ultimately included.

In the lead up to Thailand's third UPR cycle in April/May 2021, recommending States and civil society organisations (**CSOs**) have an opportunity to develop improved UPR recommendations that build on progress made and aim to increase protection for the LGBTIQ community and their defenders in Thailand.

## Past UPR Cycles for Thailand

### First UPR Cycle (5 October 2011)

**National Report Filed:**<sup>1</sup> Thailand's national report for the first UPR was published on 19 July 2011. It explicitly mentioned HRDs, sexual identity, and gender diversity. The report explained that Thailand was in the process of drafting a gender equality promotion bill aimed at preventing discrimination on the basis of sexual orientation.<sup>2</sup> The report also acknowledged the problems "people with gender identity issues still have"<sup>3</sup> in accessing some basic rights due to discrimination, and noted the need to address such a situation.<sup>4</sup> The report further recognised the need to protect the work of HRDs in safeguarding the rights of the people.<sup>5</sup>

**Stakeholders Submissions Made:**<sup>6</sup> The summary of the 27 stakeholders' submissions was published on 25 July 2011. Stakeholders expressed concern for HRDs and issues affecting the LGBTIQ community, including the lack of laws recognising gender reassignment surgeries and same-sex marriages, which resulted in various forms of discrimination against the LGBTIQ community.<sup>7</sup> Stakeholders also raised concerns about the struggle for transgender people to access employment, noting that they had been discharged from conscription to the army on the basis of alleged "mental illness."<sup>8</sup> Finally, stakeholders reported that Thai authorities posed a threat to HRDs<sup>9</sup> and recommended that the government set up an action plan to enable HRDs to act independently, free from fear and intimidation.<sup>10</sup>

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<sup>1</sup> *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Thailand*, U.N. Doc. A/HRC/WG.6/12/THA/1, 19 July 2011, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/THindex.aspx> (last visited 29 June 2017).

<sup>2</sup> First UPR cycle: *National Report*, Thailand, para. 77.

<sup>3</sup> First UPR cycle: *National Report*, Thailand, para. 77.

<sup>4</sup> First UPR cycle: *National Report*, Thailand, para. 77.

<sup>5</sup> First UPR cycle: *National Report*, Thailand, para. 124.

<sup>6</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Thailand*, U.N. Doc. A/HRC/WG.6/12/THA/3, 25 July 2011, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/THindex.aspx> (last visited 29 June 2017).

<sup>7</sup> First UPR cycle: *Stakeholders' Summary*, Thailand, para. 40.

<sup>8</sup> First UPR cycle: *Stakeholders' Summary*, Thailand, para. 40.

<sup>9</sup> First UPR cycle: *Stakeholders' Summary*, Thailand, para. 46.

<sup>10</sup> First UPR cycle: *Stakeholders' Summary*, Thailand, paras. 15, 46.

### First UPR Cycle for Thailand: Recommendations Received

In its first UPR, held in October 2011, Thailand received recommendations relevant to members of vulnerable and minority groups, and to ensuring the freedom of expression and opinion:

- Continue efforts in promoting and protecting the human rights of its people, in particular those of vulnerable groups (Brunei Darussalam).
- Combat discriminatory practices against children and adolescents belonging to minorities or in a situation of special vulnerability (Uruguay) and give them more consideration (Republic of Korea).
- Ensure its legislation is consistent with international human rights law pertaining to freedom of expression (New Zealand) and of opinion (Norway, Slovenia) not least by evaluating the current legislation and its consequences in the form of high rates of convictions (Sweden).
- Engage in a review of special security laws, with a view to amending legislation and regulations which restrict or deny freedoms of expression, association and peaceful assembly that are inconsistent with obligations under international law (Canada, Switzerland).

**Source:** *Report of the Working Group on the Universal Periodic Review: Thailand*, U.N. Doc. A/HRC/19/8, 8 December 2011, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/172/64/PDF/G1117264.pdf?OpenElement> (last visited 29 June 2017).

**Comments Received; Response to Recommendations:** Thailand did not support recommendations on reforms that would enable the full enjoyment of freedoms of expression and assembly,<sup>11</sup> except for the recommendation concerning the consistency of the freedom of expression in Thailand with international human rights law. Indeed, Thailand explained that its "domestic legislation must necessarily be consistent with both the Thai Constitution and the country's international obligations, including the ICCPR [International Covenant on Civil and Political Rights]."<sup>12</sup> Moreover, Thailand suggested that domestic legislation must also be consistent with "the right to peaceful assembly, guaranteed by the Constitution. There is no law that restricts this right in accordance with the ICCPR."<sup>13</sup>

<sup>11</sup> *Report of the Working Group on the Universal Periodic Review: Thailand, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/19/8/Add.1, 6 March 2012, para. 7, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/THindex.aspx> (last visited 4 July 2017).

<sup>12</sup> First UPR cycle: *Report of the Working Group, Addendum*, Thailand, para. 7.

<sup>13</sup> First UPR cycle: *Report of the Working Group, Addendum*, Thailand, para. 8.

Thailand accepted the recommendations to combat discrimination against vulnerable people belonging to minorities, and promote their rights.<sup>14</sup>

During the UPR Interactive Dialogue, Thailand also received a specific comment from Austria concerning harassment and disappearance of HRDs.<sup>15</sup> Thailand responded that steps had been taken to protect HRDs and their families.<sup>16</sup>

## **Second UPR Cycle (11 May 2016)**

**National Report Filed:**<sup>17</sup> Thailand's national report for the second UPR was published on 12 February 2016. The report explicitly referred to gender identity. It highlighted Thailand's 2015 Gender Equality Act which "aims to protect everyone, including persons with sexual expression that is different from biological sex, from gender-based discrimination."<sup>18</sup>

The report did not explicitly discuss HRDs. It instead noted generally that Thailand "fully respects freedom of opinion and expression and freedom of assembly." At the same time, the report stressed that freedom of expression must "be exercised in a constructive manner [...] in an appropriate context, which means time, place and manner' and must 'not disrupt social order and security."<sup>19</sup>

**Stakeholders Submissions Made:**<sup>20</sup> The summary of the 27 stakeholders' submissions was published on 23 February 2016. Stakeholders expressed considerable concern over the situation of HRDs and the LGBTIQ community. Stakeholders noted that, following the 22 May 2014 coup, at least 751 individuals including HRDs had been summoned for "attitude adjustment" or were arbitrarily detained for engaging in peaceful and legitimate human rights activities.<sup>21</sup> Stakeholders also noted the human rights abuses and violations against HRDs and reports of armed men being hired to physically attack HRDs, with authorities failing to take action to protect HRDs against private actors.<sup>22</sup>

Stakeholders recommended that Thailand make efforts to enable the visits of the Special Rapporteurs on the situations of human rights defenders and on the freedoms of expression, peaceful assembly and association.<sup>23</sup> They also recommended that Thailand end impunity for

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<sup>14</sup> First UPR cycle: *Report of the Working Group*, Thailand, paras. 88.24, 88.26-88.27.

<sup>15</sup> First UPR cycle: *Report of the Working Group*, Thailand, para. 31.

<sup>16</sup> First UPR cycle: *Report of the Working Group*, Thailand, para. 47.

<sup>17</sup> *Summary of Stakeholders' submissions prepared by the Office of the United Nations High Commissioner for Human Rights: Thailand*, U.N. Doc. A/HRC/WG.6/25/THA/3, 23 February 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/033/19/PDF/G1603319.pdf?OpenElement> (last visited 29 June 2017).

<sup>18</sup> Second UPR cycle: *National Report*, Thailand, para. 19.

<sup>19</sup> Second UPR cycle: *National Report*, Thailand, para. 116.

<sup>20</sup> *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Thailand*, U.N. Doc. A/HRC/WG.6/25/THA/1, 12 February 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/025/43/PDF/G1602543.pdf?OpenElement> (last visited 29 June 2017).

<sup>21</sup> Second UPR cycle: *Stakeholders' Summary*, Thailand, para. 22.

<sup>22</sup> Second UPR cycle: *Stakeholders' Summary*, Thailand, para. 34.

<sup>23</sup> Second UPR cycle: *Stakeholders' Summary*, Thailand, para. 8.

actions against HRDs by developing legislation that explicitly acknowledged and protected HRDs' work and gave full force and effect to the United Nations (UN) Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (DHRD).<sup>24</sup> Stakeholders further recommended the prompt, independent and effective investigation, prosecution and remediation of all threats and attacks against HRDs.<sup>25</sup>

Finally, stakeholders expressed concern regarding discriminatory practices against the LGBTIQ community.<sup>26</sup> They recommended that Thailand ensure the new Constitution being drafted include a provision prohibiting discrimination on the grounds of sexual orientation or gender identity.<sup>27</sup>

### **Second UPR Cycle for Thailand: Recommendations Received**

In its second UPR, held in May 2016, Thailand received recommendations which referenced HRDs, sexual orientation and various freedoms:

- Ensure that human rights defenders in Thailand are treated in accordance with the General Assembly Declaration on Human Rights Defenders (New Zealand).
- Effectively implement the Gender Equality Act of 2015 (South Africa) to ensure better protection for its vulnerable population (Brunei Darussalam).
- Intensify efforts to promote policies in the area of prevention, sanction and eradication of all forms of violence against women, including measures aimed at promoting their rights regardless of its religion, race, sexual identity or social condition (Mexico).
- Protect HRDs and investigate any reported cases of intimidation, harassment and attacks against them (Luxembourg, Czech Republic, Botswana, Norway, Romania, United Kingdom of Great Britain and Northern Ireland).
- Ensure that the right to freedom of opinion, expression and assembly are fully respected and its exercise facilitated, including with respect to the drafting and adopting of the new Constitution (Czech Republic, Guatemala, Japan, Lebanon, Republic of Korea, Albania, Chile, France, Austria, Costa Rica, Colombia, United Kingdom of Great Britain and Northern Ireland, Finland).
- Amend various laws to ensure the legitimate exercise of freedom of opinion, expression and assembly (Belgium, Switzerland, Germany, Botswana, Italy, Iceland, Brazil).

<sup>24</sup> Second UPR cycle: *Stakeholders' Summary*, Thailand, para. 35.

<sup>25</sup> Second UPR cycle: *Stakeholders' Summary*, Thailand, para. 35.

<sup>26</sup> Second UPR cycle: *Stakeholders' Summary*, Thailand, paras. 58, 60.

<sup>27</sup> Second UPR cycle: *Stakeholders' Summary*, Thailand, para. 10.



- Ensure the Constitution contains key human rights principles in line with the obligations under international human rights law (Uganda, Switzerland, Pakistan, Republic of Korea).
- Encourage public debate on the draft Constitution (Republic of Korea) and allow for freedom of expression and assembly regarding the draft constitution (Czech Republic, Austria).

**Source:** *Report of the Working Group on the Universal Periodic Review: Thailand*, U.N. Doc. A/HRC/33/16, 15 July 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/154/74/PDF/G1615474.pdf?OpenElement> (last visited 29 June 2017).

**Comments Received; Response to Recommendations:** Thailand received specific comments during the UPR Interactive Dialogue regarding the precarious situation of HRDs who are subject to prosecution, harassment, killings and enforced disappearance.<sup>28</sup> Thailand responded that it:

is aware of its duty to ensure that human rights defenders can work in a safe and enabling environment. The adoption of the draft act on the prevention and suppression of torture and enforced disappearance will strengthen the protection of human rights defenders.<sup>29</sup>

In this sense, Thailand accepted every recommendation made about the situation and protection of HRDs.<sup>30</sup>

During the Interactive Dialogue, various countries expressed concern over Thailand's restrictions on the right to expression, association and assembly.<sup>31</sup> Thailand accepted the general recommendations which sought active measures to fully implement those freedoms,<sup>32</sup> but merely noted without accepting the recommendations<sup>33</sup> which aimed to change the domestic law or remove undue restrictions. Regarding the latter, Thailand explained that it was:

not ready to accept these recommendations at this stage. But that is with an understanding that as the situation improves, there will continue to be more relaxation

<sup>28</sup> Second UPR cycle: *Report of the Working Group*, Thailand, paras. 36, 62.

<sup>29</sup> Second UPR cycle: *Report of the Working Group*, Thailand, para. 151.

<sup>30</sup> Second UPR cycle: *Report of the Working Group*, Thailand, paras. 158.22, 158.119-158.123.

<sup>31</sup> Second UPR cycle: *Report of the Working Group*, Thailand, paras. 25, 27, 28, 36, 42, 45, 57, 62, 88, 96, 100, 108, 125, 130.

<sup>32</sup> Second UPR cycle: *Report of the Working Group*, Thailand, paras. 158.131-158.142.

<sup>33</sup> This is standard diplomatic language commonly used by States under review to declare that they do not accept a given recommendation.

of unnecessary limitations. Some useful elements in the recommendations will also be taken into serious consideration by relevant agencies.<sup>34</sup>

Thailand accepted the recommendation for the implementation of the Gender Equality Act and affirmed that this Act protects "everyone from gender-based discrimination, including persons whose sexual expression was different from their biological sex."<sup>35</sup> In this way, Thailand also accepted the recommendation concerning the development of its policies to prevent and ultimately eradicate violence against women.<sup>36</sup>

Finally, Thailand accepted the recommendations which aimed to ensure the independence of its National Human Rights Commission and to better protect its vulnerable population.<sup>37</sup>

## Situation of the LGBTIQ Community and its HRDs in Thailand

### Freedom of Opinion and Expression

**Reputation:** A report on prejudice against the LGBTIQ community in Thailand described Thailand's LGBTIQ-friendly reputation as a "façade that is quickly eroding as signs of intolerance and LGBT prejudice are beginning to emerge."<sup>38</sup> In addition, in 2014, the UN Resident Coordinator in Thailand and UN Development Programme (**UNDP**) Representative, Luc Stevens, said that despite the high visibility of the LGBT community, such visibility "does not always translate to equality."<sup>39</sup>

**Major LGBTIQ Events:** In 2013, the International Lesbian and Gay Association (**ILGA**) Asia conference was hosted in Bangkok without interruption.<sup>40</sup> The success of the conference was of special significance as the previous ILGA Asia conference in Indonesia in 2010 was halted by protesters.<sup>41</sup> In 2016, the ILGA World Conference was successfully hosted in Bangkok without interruption and with Thai officials giving opening and closing speeches.

**Threats to LGBTIQ HRDs:** In the wake of the *coup*, freedom of expression of HRDs working on LGBTIQ appears to have been jeopardised. For example, an ultranationalist and pro-junta Thai newspaper, Manager Daily, published a column describing in graphic detail how prisoners would gang-rape a Thai anti-junta LGBTIQ HRD known as Aum Neko.<sup>42</sup> The column was

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<sup>34</sup> Second UPR cycle: *Report of the Working Group, Addendum*, Thailand, paras. 18-19.

<sup>35</sup> Second UPR cycle: *Report of the Working Group*, Thailand, para. 75.

<sup>36</sup> Second UPR cycle: *Report of the Working Group*, Thailand, paras. 158.64, 158.84.

<sup>37</sup> Second UPR cycle: *Report of the Working Group*, Thailand, paras. 158.26-158.28, 158-40-158.48.

<sup>38</sup> Hunter Gray, "Negotiating Invisibility: Addressing LGBT Prejudice in China, Hong Kong, and Thailand", Master's Capstone Projects. 30. 2014, p. 16, available at [http://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1029&context=cie\\_capstones](http://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1029&context=cie_capstones) (last visited 4 July 2017).

<sup>39</sup> Pravit Rojanaphruk, "LGBT Thais 'still face stigma and hostility'", *The Nation*, 17 September 2014, available at <http://www.nationmultimedia.com/national/LGBT-Thais-still-face-stigma-and-hostility-30243455.html> (last visited 4 July 2017).

<sup>40</sup> Hunter Gray, "Negotiating Invisibility: Addressing LGBT Prejudice in China, Hong Kong, and Thailand", p. 19.

<sup>41</sup> Hunter Gray, "Negotiating Invisibility: Addressing LGBT Prejudice in China, Hong Kong, and Thailand", p. 19.

<sup>42</sup> "Pro-Coup Newspaper Publishes 'Parody Piece' Describing Gang-Rape of LGBT Activist", *Khao Sod*, 1 July 2014, available at [http://www.khaosod.co.th/view\\_newsonline.php?newsid=TVRRd05ESXhORGmzTkEgPQ](http://www.khaosod.co.th/view_newsonline.php?newsid=TVRRd05ESXhORGmzTkEgPQ)

published under the parody section of the extreme newspaper and detailed how the military junta's National Council for Peace and Order would arrest and send "Neko to a prison in Bangkok to 'return happiness to the male inmates who have been deprived of sex for years."<sup>43</sup> There were no apparent consequences for the newspaper for its graphic and violent column.

## Freedom of Association and Assembly

**Pride Celebrations:** Phuket has successfully held Phuket Pride Week each year since 1999.<sup>44</sup> The week features an annual parade organised to raise awareness of the LGBTIQ community and money for LGBTIQ and Human Immunodeficiency Virus (**HIV**) charities within Phuket by charity organisation Phuket Loves You.<sup>45</sup> However, the 2016 parade gathered fewer people than previous years.<sup>46</sup> The low turnout was partly attributed to the area where the parade is hosted, which known for sex tourism, but also the failure to reach out to other Thai LGBTIQ communities.<sup>47</sup>

Phuket Pride Week is the only pride celebration in Thailand. The last pride parade marching through the capital city of Bangkok was held a decade ago in 2006, while Chiang Mai's pride parade was last staged in 2009, as it was thereafter banned by the local government due to pressure from social conservatives.<sup>48</sup>

In 2017, Thailand planned to hold the first gay pride parade in 11 years in Bangkok.<sup>49</sup> However, in the wake of the death of Thailand's King Bhumibol Adulyadej in October 2016, the pride parade was postponed to November 2017 due to the one-year period of mourning in place.<sup>50</sup>

**IDAHOT Celebrations:** In contrast with the lack of public pride celebrations, in 2015 the United Nations Educational, Scientific and Cultural Organisation (**UNESCO**) Bangkok and its partners in Thailand celebrated the International Day Against Homophobia, Transphobia and Biphobia (**IDAHOT**). The celebrations featured 25 events over seven days at the Bangkok Art and Culture

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[=&sectionid=](#) (last visited 4 July 2017); Joe Lo, "Thailand: Major Newspaper 'Parody' Describes Gang-Rape of LGBT Activist and Politician", Pink News, 1 July 2014, available at <http://www.pinknews.co.uk/2014/07/01/thailand-major-newspaper-parody-describes-gang-rape-of-lgbt-activist-and-politician/> (last visited 4 July 2017).

<sup>43</sup> "Pro-Coup Newspaper Publishes 'Parody Piece' Describing Gang-Rape of LGBT Activist", Khao Sod, 1 July 2014.

<sup>44</sup> Watsamon Tri-yasakda, "Thailand's only pride parade marched in Phuket (Photo Essay)", Coconuts Bangkok, 11 May 2016, available at <http://bangkok.coconuts.co/2016/05/11/thailands-only-pride-parade-marched-phuket-photo-essay-0> (last visited 4 July 2017).

<sup>45</sup> Watsamon Tri-yasakda, "Thailand's only pride parade marched in Phuket" (Coconuts Bangkok, 11 May 2016).

<sup>46</sup> Watsamon Tri-yasakda, "Thailand's only pride parade marched in Phuket" (Coconuts Bangkok, 11 May 2016).

<sup>47</sup> Watsamon Tri-yasakda, "Thailand's only pride parade marched in Phuket" (Coconuts Bangkok, 11 May 2016).

<sup>48</sup> Watsamon Tri-yasakda, "Proud and fearless in Phuket: Coconuts visits Thailand's only 'pride march' (Photos)", Coconuts Bangkok, 29 April 2015, available at <http://bangkok.coconuts.co/2015/04/29/proud-and-fearless-phuket-coconuts-visits-thailands-only-pride-march> (last visited 4 July 2017).

<sup>49</sup> Yi Shu Ng, "Thailand's capital will hold its first gay pride parade in 11 years", Mashable, 18 January 2017).

<sup>50</sup> See *the calendar of events on Facebook*, "Bangkok Pride 2017", Facebook Page, 2017, available at <https://www.facebook.com/events/1577498905886980/> (last visited 5 July 2017). Bangkok Pride 2017, SignedEvents, 2017, available at <https://signedevents.com/thailand/bangkok/bangkok-pride-2017/> (last visited 5 July 2017).

Centre. These included cultural performances, such as concerts and theatrics, as well as workshops for members of the community to inform the public about the challenges faced by the LGBTIQ community.<sup>51</sup>

Celebrations were held throughout the State marking IDAHOT in 2017. In addition, a petition supporting a bill on civil partnership was handed to a representative of the Minister of Justice.<sup>52</sup>

**LGBTIQ Youth:** In 2015, UNESCO Bangkok launched a campaign entitled "PurpleMySchool" and UNDP launched the initiative "Being LGBTI in Asia" in anticipation of International Youth Day. The "PurpleMySchool" campaign was designed to create safe education spaces for LGBTIQ youth.<sup>53</sup> The campaign "encouraged parents, peers and teachers to join the campaign as many LGBTI young people in the region experience dread at school."<sup>54</sup>

## Right to Work

In 2014, a transgender teacher and activist, Kath Khangpiboon, applied to become a permanent lecturer at Thailand's Thammasat University. However, a board committee rejected her application, and her subsequent appeal of the decision was likewise rejected.

Kath Khangpiboon is a renowned LGBTIQ activist throughout Southeast Asia. She established the Thai Transgender Alliance — an organisation promoting the rights of transgender people in Thailand and campaigning for equal rights for the LGBTIQ community.<sup>55</sup> Despite obtaining a Bachelor and Master's degree and working as an external lecturer at Thammasat University, Khangpiboon's application to become a permanent staff member was rejected on the grounds of her "inappropriate" social media activity from five years prior on her private Instagram account.<sup>56</sup> The social media post labelled "inappropriate" involved a picture of a penis-shaped lipstick offered for Halloween.<sup>57</sup>

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<sup>51</sup> Noel Boivin, "Is Thailand the lesbian, gay, bisexual, transgender and intersex paradise it's often seen to be?", IDAHOT Thailand, 7 July 2015, available at <http://en.idahothailand.org/news/2015/7/7/is-thailand-the-lesbian-gay-bisexual-transgender-and-intersex-paradise-its-often-seen-to-be> (last visited 4 July 2017).

<sup>52</sup> Kaewta Ketbungkan, "Call for Rights at annual celebration for LGBT advocacy (Photos)", Khaoso, 18 May 2017, available at <http://www.khaosodenglish.com/culture/2017/05/18/call-rights-annual-celebration-lgbt-advocacy-photos/> (last visited 5 July 2017).

<sup>53</sup> "Campaign to Support LGBTI Youth", The Nation, 7 August 2015, available at <http://www.nationmultimedia.com/detail/national/30266114> (last visited 4 July 2017).

<sup>54</sup> "Campaign to Support LGBTI Youth", The Nation, 7 August 2015.

<sup>55</sup> "Transgender Loses Fight for Reinstatement at Thammasat University", Chiangrai Times, 26 June 2015, available at <http://www.chiangraitimes.com/transgender-loses-fight-for-reinstatement-at-thammasat-university.html> (last visited 5 July 2017).

<sup>56</sup> Siam Voices, "Transgender Activist Takes on Thai University in Battle for LGBT Rights", Asian Correspondent, 8 June 2015, available at <https://asiancorrespondent.com/2015/06/thailand-kath-khangpiboon-lgbt/> (last visited 5 July 2017).

<sup>57</sup> Siam Voices, "Transgender Activist Takes on Thai University in Battle for LGBT Rights", Asian Correspondent, 8 June 2015.

This was the first instance of Thammasat University referring to social media activity when considering a lectureship application.<sup>58</sup> It is also noteworthy that the university decided to reject Kath Khangpiboon's application even though she met all other selection criteria and had received support from most members of the faculty, including the Dean. Moreover, although there are other members of the university's staff who identify as gay and transgender, Khangpiboon believes that some of these members came out after being appointed and that her circumstances as an outspoken activist are unique.<sup>59</sup>

## Right to Equality and Non-Discrimination

**Gender Equality Act:** In September 2015, the Thai military junta enacted the Gender Equality Act. This Act is a national non-discrimination law designed to protect individuals against discrimination on the grounds of gender expression.<sup>60</sup> The Act does so by prohibiting discrimination against someone based on their differing appearance from their sex at birth. It is the first national legislation in Southeast Asia to offer legal protection against discrimination based on gender expression.<sup>61</sup>

Although the law is seen by Thai LGBTIQ HRDs as imperfect in light of loopholes that may provide exemptions for religious institutions,<sup>62</sup> the Gender Equality Act has been generally heralded as a positive step forward.<sup>63</sup> Indeed, Thailand's enactment of the Gender Equality Act fulfils recommendations it accepted in its first UPR to promote and protect the human rights of vulnerable groups, and to ensure its legislation is consistent with international human rights law pertaining to freedom of expression.

**New Constitution:** In 2015, it was expected that Thailand's new Constitution under the military junta would include the term "third gender" for the first time to empower and secure equal rights protections for the transgender community. A member of the panel drafting the Constitution suggested that the words "third gender" were to be included in the Constitution "because Thai society has advanced" such that "there are not only men and women' and 'all

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<sup>58</sup> Siam Voices, "Transgender Activist Takes on Thai University in Battle for LGBT Rights", Asian Correspondent, 8 June 2015.

<sup>59</sup> Siam Voices, "Transgender Activist Takes on Thai University in Battle for LGBT Rights", Asian Correspondent, 8 June 2015.

<sup>60</sup> "World Report 2016: Events of 2015", Human Rights Watch, 2016, p. 56g, available at [https://www.hrw.org/sites/default/files/world\\_report\\_download/wr2016\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf) (last visited 3 July 2017).

<sup>61</sup> Dominique Mosbergen, "The Darker Side of Being Transgender in Thailand", Chiangrai Times, 21 October 2015, available at <http://www.chiangraitimes.com/the-darker-side-of-being-transgender-in-thailand.html> (last visited 6 July 2017).

<sup>62</sup> Kyle Knight, "Dispatches: Thailand Acts to End LGBT Discrimination", Human Rights Watch, 21 September 2015, available at <https://www.hrw.org/news/2015/09/21/dispatches-thailand-acts-end-lgbt-discrimination> (last visited 5 July 2017).

<sup>63</sup> Dominique Mosbergen, "The Darker Side of Being Transgender in Thailand", Chiangrai Times, 21 October 2015.

sexes need to be protected with all sexes to be equal.”<sup>64</sup> The draft Constitution did not, however, include the third gender as anticipated.

Groups also anticipated the inclusion of a clause in the Constitution would prohibit discrimination based on sexual orientation. The Constitution Drafting Committee in 2016 stated, however, that sexual orientation would not be included in the draft Constitution's equality clause.<sup>65</sup>

In the lead up to the referendum, the military junta banned criticism of the draft Constitution.<sup>66</sup> A referendum on the draft Constitution was held on 7 August 2016, with voter turnout representing just over 80% of the Thai population; the referendum passed with over 60% in favour of the draft Constitution.<sup>67</sup>

## Conclusion

Since its first UPR, Thailand has accepted UPR recommendations to combat discrimination and promote human rights the LGBTIQ community and HRDs working on LGBTIQ issues. Moreover, Thailand has asserted its dedication to take steps to further protect HRDs from various forms of ill-treatment. Its commitment in this regard has been borne out in practice, particular through Thailand's introduction of the Gender Equality Act in 2015 and in the numerous LGBTIQ-related events that have been successfully staged in the State.

Areas for further progress do remain. In particular, Thailand has not supported UPR recommendations that have suggested to repeal the current legislation to protect further freedoms of expression, opinion and assembly, among others. This position may leave the LGBTIQ community and HRDs vulnerable to further attacks and ill-treatment in the future. Moreover, the junta's banning of criticism is in direct contradiction to the recommendations given to – and accepted by – Thailand during the second UPR which stated that debate about the draft constitution should be encouraged and freedom of expression and assembly ensured.

Nevertheless, it is worth noting that during the second UPR (the first to be attended by Thailand's currently-ruling military junta), Thailand's delegation indicated that it was not ready to support such recommendations “at this stage” but that “as the situation improves, there will

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<sup>64</sup> Amy Sawitta Lefevre, “Thailand to Recognize ‘Third Gender’ in New Constitution: Panel”, Reuters, 15 January 2015, available at <http://www.reuters.com/article/us-thailand-politics-idUSKBN0K0oSC20150115> (last visited 5 July 2017).

<sup>65</sup> Khemthong Tonsakulrungruang, “Life Under Thailand's 2016 Constitution”, New Mandala, 5 February 2016, available at <http://asiapacific.anu.edu.au/newmandala/2016/02/05/liberties-and-rights-lost-under-thailands-2016-constitution/> (last visited 5 July 2017).

<sup>66</sup> “Thailand Unveils New Constitution Draft to Public”, Deutsche Welle, 29 March 2016, available at <http://www.dw.com/en/thailand-unveils-new-constitution-draft-to-public/a-19147871> (last visited 5 July 2017).

<sup>67</sup> “Thailand referendum: new constitution wins approval”, Al Jazeera, 7 August 2016, available at <http://www.aljazeera.com/news/2016/08/thailand-referendum-vote-favor-constitution-160807120506423.html> (last visited 5 July 2017).

continue to be more relaxation of unnecessary limitations.” This presents an opportunity to revisit the need for further strengthening of protections for fundamental freedoms in the third UPR cycle and beyond.

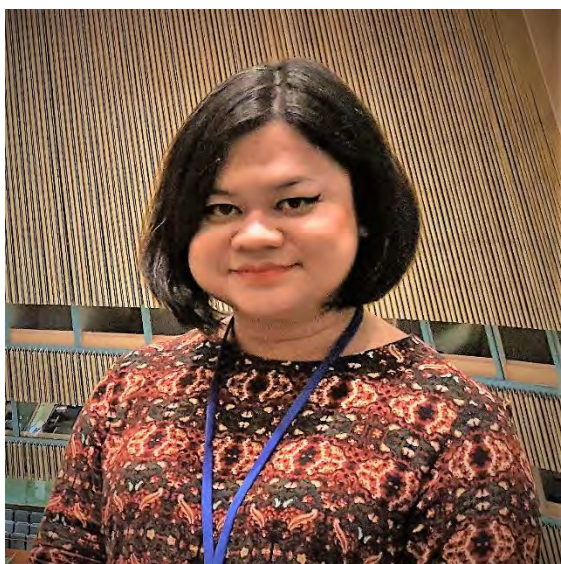
## **Recommendations**

In the lead-up to the third UPR review of Thailand in April/May 2021:

- CSOs should actively engage in monitoring the implementation of those recommendations Thailand accepted and/or noted during the first two UPR cycles so as to gather relevant data on the improvement of the human rights situation in the country and to report at the third UPR cycle.
- CSOs should continue documenting violations and abuses endured by LGBTIQ people and their defenders so as to provide recommending states and the relevant UN mechanisms with solid evidence-based information.
- CSOs and recommending states should work collaboratively to develop UPR recommendations for the third cycle that emphasise the benefit to Thailand of removing unnecessary limitations to, and strengthening the protection of, fundamental freedoms.

## Thailand: LGBTIQ HRD Interview

### Human Rights of LGBTIQ Communities and HRDs: Frontline Voices



### **Kath Khangpiboon, Founder, Thai Transgender Alliance**

#### **How did you become involved in LGBTIQ rights work?**

I became interested in LGBT work because of my studies in social work, when I studied my Bachelor's degree. It was the first time I learned about the concept of gender. Before I studied and during my studies I didn't have any issues with my gender and I could do everything equally, but the problem is when I graduated, I sensed my difference — people treated me like the 'other' and

society's reaction strongly affected me. It was a turning point for me to want to work more for human rights and LGBT rights.

I did not go straight into LGBT work. I applied for a scholarship to train in social work, but my application was rejected, as the local government who are the funders of the scholarship said they could not support transgender people like me. It was the first time that I realised, as a transgender woman, I have a problem in society. This is why I became interested in being an activist.

#### **When did you establish the Thai Transgender Alliance?**

When I was studying social work, I studied transgender issues, and this is why I met a lot of transgender activists. I attended a lot of conferences and seminars about trans and LGBTI issues. Some of the transgender activists invited me to join as a working group member of the transgender community. After one year, we developed our community into a network, and we established the Thai Transgender Alliance. The Thai Transgender Alliance was founded in 2011.<sup>765</sup>

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<sup>765</sup> "Thai Transgender Alliance", Alturi, Website, available at [http://www.alturi.org/thai-transgender\\_alliance](http://www.alturi.org/thai-transgender_alliance) (last visited 3 July 2017).



**What have been the biggest challenges you've faced in advocating for LGBTIQ rights?**

I see a lot of people who have a problem with social status in society. That is why if you are LGBTIQ under the middle class, your resources are limited, and that's why we see a lot of people who experience discrimination, because it's not only their identity or sexual diversity, but their social class. It is very important in Southeast Asia. If people from higher classes have problems, they may not talk about them because of their social status.

**How would you overcome this challenge?**

We need to work closer with the community; we need to talk more about gender-based discriminations. The civil society and the government need to work together to gather more data.

**How have things have changed over the past few years regarding LGBTIQ rights?**

Over the past 5 years, I have seen a lot of people talking about gender diversity in high society. Some people say the evidence of progress is that we can see a lot of the LGBT representatives in the media. A number of transgender actors are working at the peak of drama or theatre, as a lot of the topics focus on LGBTIQ issues. People say this is evidence of progress, but for me it is not. This does not show LGBTIQ people are accepted.

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<sup>766</sup> "Thailand Gender Equality Act", 21 September 2015, Human Rights Watch, available at <https://www.hrw.org/news/2015/09/21/thailand-gender-equality-act> (last visited 3 July 2017).

**With the passing of the Gender Equality Act, have things changed legally and/or amongst civil society?**

For me, I think I have seen only one side of the promotion of the Gender Equality Act<sup>766</sup> – that the government is doing things. For me, it's not real though. I'm not sure this Act can help us. The rationale to develop this Act is not open for civil society to be involved and have a discussion about it. LGBT people have not been able to participate in the development of the Act. As you see in the law, some of the Act has limits, as there are exceptions to people not being able to discriminate, such as for religious or national security reasons.

I don't see practical changes, but I see more people talking about it, and LGBT people are proud of it, as they believe they can't be discriminated against, but they didn't read it or understand the meaning of the writing in the rules of the Act. Most people misunderstand the Gender Equality Act.

**Does your government do enough to protect LGBTIQ rights?**

We are not doing much with the politicians, as they are not permanent, because of the constant political changes. But we seek to work with the permanent staff and officers. For this year and the next five years, we focus a lot on working with the government staff to do some research projects or gender sensitivity projects, as we do with the Ministry of Defence to work on transgender military recruitment.

**Do you think the UPR recommendations have an impact on Thailand? Do you think the recommendations lead governments to change policies to strengthen human rights protections?**

The recommendations didn't talk much about gender identity and sexual orientation. But I think it is very good when we activists or those affected by the issues get together and draft issues affecting them, and discuss what is happening on the ground. It is really useful to have workshops to do this and to make the people understand where there are problems in society.

We will have another training with a UPR team to follow up the recommendations from the latest UPR when our government made submissions. For me, I think it cannot

change the government, to change the policies. The one thing that can change the policy is working with the permanent officers and staff of the government — working with them as partners.

**What gives you hope when looking to the future of LGBTIQ rights in Thailand?**

Our work tries to change the attitudes of society so that they accept us. I think we need to get support from people who are not LGBT; we need to collaborate with other CSOs and the government. A lot of the successful stories come not from only working within our community, but we need to extend our concern and have sensitivity with other issues. For me, I really hope this cooperation will occur.

# Timor-Leste: Country Profile

## Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

### Introduction

#### UPR Cycles

**First UPR Cycle:** 12 October 2011

**Second UPR Cycle:** 3 November 2016

**Third UPR Cycle:** October/November 2021

Issues related to the lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) community and human rights defenders (**HRDs**) were raised in both the first and second Universal Periodic Review (**UPR**) cycles for the Democratic Republic of Timor-Leste

(**Timor-Leste**). Timor-Leste accepted all recommendations. These included, on the one hand, a recommendation to define marriage as being between a man and woman. On the other hand, they included a recommendation that Timor-Leste provide more resources for human rights mechanisms and proper investigations into human rights violations. Moreover, Timor-Leste advised during the second Interactive Dialogue that it was committed to protecting fundamental freedoms and that everyone in Timor-Leste was equal before the law.

As this Country Profile explains, Timor-Leste has adopted an encouraging official position in favour of the equality of LGBTIQ people. It is also open to human rights reforms, and has, among other things, taken steps to offer human rights training to its police and to develop and implement a national human rights action plan. However, vulnerabilities to the LGBTIQ community and HRDs remain, not only in Timor-Leste's laws on demonstrations, freedom of expression, freedom of the press, and labour. There have also been reports of violence and police brutality against the LGBTIQ community.

In the lead up to Timor-Leste's third UPR cycle in October/November 2021, recommending States and civil society organisations (**CSOs**) have the opportunity to develop improved UPR recommendations that aim to provide more protection for HRDs and LGBTIQ people.

"Timor-Leste is a small country, and the population is not a lot of people, and we get to know each other, so it's easy for us to discuss issues about LGBT. Honestly, I hope that in three to four years, the community will understand and feel an honour for themselves. The issue is not only for civil society, but the general community."

**Feliciano da Costa Araujo,  
President, Coalition for Diversity  
and Action (CODIVA)**

## Past UPR Cycles for Timor-Leste

### First UPR Cycle (12 October 2011)

**National Report Filed:**<sup>1</sup> Timor-Leste's national report for the first UPR was published on 19 July 2011. The report did not mention the LGBTIQ community or HRDs directly, but did note issues relevant to the work of LGBTIQ HRDs. It affirmed a commitment to international human rights standards<sup>2</sup> and noted that Timor-Leste had implemented national legislation protecting the freedom of assembly and demonstration,<sup>3</sup> and that the arbitrary use of lethal force by security forces was already criminalised,<sup>4</sup> with efforts underway to improve training for security forces to prevent human rights violations.<sup>5</sup>

Timor-Leste advised that its 2005 Decree Law No. 5 (the "NGO [i.e., non-governmental organisation] Registration Law") was part of a "coherent legal framework" ensuring freedoms of expression, association, assembly and demonstration.<sup>6</sup> It reported that over 400 NGOs were registered in 2010,<sup>7</sup> and that in 2007, the Office of the Adviser on Civil Society was formed to strengthen cooperation between government and civil society.<sup>8</sup> Finally, Timor-Leste affirmed its intention to create "a more egalitarian society, without discrimination", through a human rights awareness campaign and educational efforts,<sup>9</sup> and to ensure access to justice by implementing the Strategic Plan for the Justice Sector (2011–2030).<sup>10</sup>

**Stakeholders Submissions Made:**<sup>11</sup> The summary of the 6 stakeholders' submissions was published on 22 July 2011. Stakeholders argued that Timor-Leste needed to ensure the legitimate status of NGOs and CSOs by amending the NGO Registration Law.<sup>12</sup> They reported that the government had failed to respond to recommendations by its national human rights institution (NHRI),<sup>13</sup> the Provedoria. They highlighted allegations of human rights violations by

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<sup>1</sup> *National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1: Timor-Leste*, U.N. Doc. A/HRC/WG.6/12/TLS/1, 19 July 2011, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TLIndex.aspx> (last visited 29 June 2017).

<sup>2</sup> First UPR cycle: *National Report*, Timor-Leste, paras. 14-15, 116.

<sup>3</sup> First UPR cycle: *National Report*, Timor-Leste, paras. 23, 31.

<sup>4</sup> First UPR cycle: *National Report*, Timor-Leste, para. 25.

<sup>5</sup> First UPR cycle: *National Report*, Timor-Leste, para. 28.

<sup>6</sup> First UPR cycle: *National Report*, Timor-Leste, para. 31.

<sup>7</sup> First UPR cycle: *National Report*, Timor-Leste, para. 36.

<sup>8</sup> First UPR cycle: *National Report*, Timor-Leste, para. 37.

<sup>9</sup> First UPR cycle: *National Report*, Timor-Leste, para. 120.

<sup>10</sup> First UPR cycle: *National Report*, Timor-Leste, para. 117.

<sup>11</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Timor-Leste*, U.N. Doc. A/HRC/WG.6/12/TLS/3, 22 July 2011, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/152/11/PDF/G1115211.pdf?OpenElement> (last visited 29 June 2017).

<sup>12</sup> First UPR cycle: *Stakeholders' Summary*, Timor-Leste, para. 5.

<sup>13</sup> First UPR cycle: *Stakeholders' Summary*, Timor-Leste, para. 6.

police and military, such as use of excessive force and failure to prosecute those responsible.<sup>14</sup> Stakeholders also noted the need for a campaign to address gender-based violence.<sup>15</sup>

### **First UPR Cycle for Timor-Leste: Recommendations Received**

In its first UPR, held in October 2011, Timor-Leste received the following recommendations related to the treatment of HRDs:

- Expedite the completion of statutes that provide a guarantee for further human rights promotion and protection (Indonesia).
- Strengthen the state of laws and good governance, especially on the legal enforcement and capacity building for national agencies on human rights (Vietnam), particularly regarding the Provedoria, Timor-Leste's National Human Rights Institution (Spain, New Zealand).
- Consult and involve NGOs as well as civil society in the follow-up to the UPR (Austria).
- Further increase regional and international cooperation on human rights, particularly with the ASEAN nations and with the Human Rights Council (Vietnam) and continue efforts to promote and protect the human rights of the vulnerable (Indonesia).
- Safeguard the family institution and marriage as a marital union between a man and a woman based on free consent (Holy See).

**Source:** *Report of the Working Group on the Universal Periodic Review: Timor-Leste*, U.N. Doc. A/HRC/19/17, 3 January 2012, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/100/26/PDF/G1210026.pdf?OpenElement> (last visited 29 June 2017).

**Comments Received; Response to Recommendations:** During the Interactive Dialogue, Timor-Leste was specifically commended for having established an inter-ministerial working group that worked together with the civil society to prepare for the UPR.<sup>16</sup> Timor-Leste accepted all recommendations mentioned above, with the exception of Indonesia's and Vietnam's recommendation to enhance protection for vulnerable groups. In this regard, Timor-Leste declared that the promotion and protection of vulnerable people from all kind of abuses are embedded in previously existing domestic laws.<sup>17</sup>

Concerning the recommendation from the Holy See on defining marriage as being between a man and a woman, Timor-Leste specified that:

<sup>14</sup> First UPR cycle: *Stakeholders' Summary*, Timor-Leste, para. 13.

<sup>15</sup> First UPR cycle: *Stakeholders' Summary*, Timor-Leste, paras. 14, 49.

<sup>16</sup> First UPR cycle: *Report of the Working Group*, Timor-Leste, para. 42.

<sup>17</sup> First UPR cycle: *Report of the Working Group*, Timor-Leste, paras. 78.2, 78.41.

The Constitution [...] guarantees the right of everyone to establish and live in a family, and requires that marriage [...] be based on upon free consent by the parties and on terms of full equality of rights between spouses, in accordance with the law. The recently enacted Civil Code defines marriage as a union between a man and a woman.<sup>18</sup>

## Second UPR Cycle (3 November 2016)

**National Report Filed:**<sup>19</sup> Timor-Leste's national report for the second UPR was published on 22 August 2016. While it did not explicitly address issues relevant to HRDs, it did discuss its sexual minorities and its government's work with CSOs. Timor-Leste explicitly recognised "those with different sexual orientations"<sup>20</sup> as a minority group and acknowledged the Coalition for Diversity and Action (**CODIVA**), a national civil society network working with State agencies "to provide advocacy on HIV/AIDS [i.e. Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome] and rights in order to obtain protection for minority groups, including those of varying sexual orientations, at the national and municipal levels."<sup>21</sup>

On minority groups, Timor-Leste stated that "State institutions have always had a good relationship with minority groups [...] to create an environment of tranquility and safety in order to create national stability and to ensure harmony and mutual respect."<sup>22</sup> Timor-Leste also discussed the government's current collaboration with CSOs in order to support advocacy and "to obtain protection for minority groups, especially those with different sexual orientations."<sup>23</sup>

**Stakeholders Submissions Made:**<sup>24</sup> The summary of the 10 stakeholders' submissions was published on 17 August 2016. Stakeholders explicitly discussed the situation of the LGBTIQ community but not that of HRDs. They raised concerns about discrimination against the LGBTIQ community and cited the lack of "laws prohibiting discrimination on the basis of sexual orientation, gender identity and intersex status" as a "contributing factor to the discrimination experienced by [LGBTIQ people]."<sup>25</sup> They further noted that not having anti-discrimination laws puts LGBTIQ people at a disadvantage "in all areas of life where gender information is required, including employment, healthcare, education and access to justice."<sup>26</sup>

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<sup>18</sup> *Report of the Working Group on the Universal Periodic Review: Timor-Leste, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/19/17/Add.1, 15 March 2012, para. 18, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TLIndex.aspx> (last visited 29 June 2017).

<sup>19</sup> *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Timor-Leste*, U.N. Doc. A/HRC/WG.6/26/T/LS/1, 22 August 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/185/42/PDF/G1618542.pdf?OpenElement> (last visited 29 June 2017).

<sup>20</sup> Second UPR cycle: *National Report*, Timor-Leste, para. 60.

<sup>21</sup> Second UPR cycle: *National Report*, Timor-Leste, para. 60.

<sup>22</sup> Second UPR cycle: *National Report*, Timor-Leste, para. 59.

<sup>23</sup> Second UPR cycle: *National Report*, Timor-Leste, para. 60.

<sup>24</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Timor-Leste*, U.N. Doc. A/HRC/WG.6/26/TLS/3, 17 August 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/183/00/PDF/G1618300.pdf?OpenElement> (last visited 29 June 2017).

<sup>25</sup> Second UPR cycle: *Stakeholders' Summary*, Timor-Leste, paras. 21-22.

<sup>26</sup> Second UPR cycle: *Stakeholders' Summary*, Timor-Leste, para. 23.

Stakeholders reported that LGBTIQ people face discrimination in their access to work. In particular, they highlighted that the 2002 Labour Code, which prohibited discrimination on the basis of sexual orientation, had been repealed in 2012.<sup>27</sup> In addition, stakeholders advised that “difficulties to accessing healthcare in a safe and non-discriminatory manner discourages LGBTI people from accessing health care.”<sup>28</sup> Finally, stakeholders noted that the freedom of assembly is restricted by a police practice “requiring the organizers of a demonstration to obtain a permit and had banned a number of peaceful gatherings.”<sup>29</sup>

### **Second UPR Cycle for Timor-Leste: Recommendations Received**

During its second UPR, held in November 2016, Timor-Leste received recommendations referencing LGBTIQ people, sexual orientation, and gender equality for the first time:

- Adopt legal and administrative measures to investigate and punish acts of discrimination, stigmatisation and violence against LGBTI persons (Argentina) and strengthen the legal framework in order to ensure gender equality and ban discrimination on the grounds of sexual orientation and gender identity (Chile).
- Recognise the legitimacy of the work of HRDs and provide them with protection, and avoid arbitrary arrests and reprisals, investigate threats or attacks against them and bring those responsible to justice (Uruguay) and advance in the area of reparations for victims of human rights violations (Argentina).
- Effectively implement laws concerning sexual and gender-based violence by providing the human, financial and institutional resources necessary (Germany) and ensure access to justice for all the population, especially for victims of sexual and gender-based violence (Uruguay).
- Take further measures to ensure freedom of expression (Japan, United States of America).
- Work with civil society and local authorities to address domestic and sexual violence and provide the national police's Vulnerable Persons Unit with sufficient resources to maintain an adequate presence around the country (United States of America).
- Give continuity to strengthening of national human rights institutions and mechanisms (Nepal) in conformity with the Paris Principles (Costa Rica, Guatemala).

Source: *Report of the Working Group on the Universal Periodic Review: Timor-Leste*. U.N. Doc. A/HRC/34/11 (28 December 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/442/42/PDF/G1644242.pdf?OpenElement> (last visited 29 June 2017).

<sup>27</sup> Second UPR cycle: *Stakeholders' Summary*, Timor-Leste, para. 50.

<sup>28</sup> Second UPR cycle: *Stakeholders' Summary*, Timor-Leste, para. 56.

<sup>29</sup> Second UPR cycle: *Stakeholders' Summary*, Timor-Leste, para. 49.

**Comments Received; Response to Recommendations:** During the Interactive Dialogue, Timor-Leste received specific comments related to its LGBTIQ community. Other comments focused on the continuous absence of laws tackling discrimination on the basis of sexual orientation; the need to take measures to hold individuals responsible for acts of violence against LGBTIQ persons; and persistent discrimination against LGBTIQ people.<sup>30</sup> Timor-Leste responded that their State "supported the first Human Rights Council resolution on LGBTI rights, and was tackling the relevant issues in terms of access to services and job placement."<sup>31</sup>

Timor-Leste accepted all recommendations mentioned above. It affirmed that it:

attaches great importance to promoting equality and combat discrimination (...) on the grounds of sexual orientation and gender identity. All the citizens are equal before the law and have the same rights, and public authorities must not discriminate citizens in any ground, included on the basis of sexual orientation and gender identity.<sup>32</sup>

Timor-Leste further stated that "[a]ll kind of violence incidents, such as of excessive use of force, arbitrary detention, abuse of power and torture, are prohibited in Timor-Leste and punished accordingly. (...) Also, all the security forces receive frequently training on human rights."<sup>33</sup>

Finally, on the protection of fundamental freedoms, Timor-Leste reaffirmed its commitment to fully guarantee freedom of expression, information, assembly and association and freedom of the press.<sup>34</sup>

## Situation of the LGBTIQ Community and its HRDs in Timor-Leste

### Freedom of Association and Assembly

**Limited Public Attention:** Sexual orientation and gender identity issues receive limited public attention in Timor-Leste. As a transgender woman from Timor-Leste explained in 2015, "as a new country we don't have a big LGBT rights organisation that really supports us to have a pride march."<sup>35</sup> Nevertheless, Timor-Leste did hold some Pride events in 2016, and their first-

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<sup>30</sup> Second UPR cycle: *Report of the Working Group*, Timor-Leste, paras. 33, 42, 44.

<sup>31</sup> Second UPR cycle: *Report of the Working Group*, Timor-Leste, para. 85.

<sup>32</sup> *Report of the Working Group on the Universal Periodic Review: Timor-Leste, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/34/11/Add.1, 9 March 2017, p. 3, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/054/91/PDF/G1705491.pdf?OpenElement> (last visited 29 June 2017).

<sup>33</sup> Second UPR cycle: *Report of the Working Group, Addendum*, Timor-Leste, p. 2.

<sup>34</sup> Second UPR cycle: *Report of the Working Group*, Timor-Leste, para. 15.

<sup>35</sup> Richard Ammon, "Gay Life in East Timor: Interview with Richa", Global Gayz, 6 June 2015, available at <http://www.globalgayz.com/gay-life-in-east-timor/> (last visited 6 July 2017).



ever Pride March in 2017.<sup>36</sup> In addition, "a small number of LGBT advocacy organisations have been active in recent years."<sup>37</sup>

**Growing Civil Society Spaces:** Some LGBTIQ CSOs and NGOs have been established including in the spheres of public health and human rights, including in the area of non-discrimination.<sup>38</sup> Often supported by regional and international organisations, these local organisations have successfully organised educational trainings and advocacy events.

For example, ISEAN-Hivos Foundation, with funding from the Netherlands, operates an advocacy program in Timor-Leste to strengthen the community of gay men and the broader LGBTIQ community.<sup>39</sup> Community based organisations supported by South East Asia Networks and Hivos have also conducted workshops to explain gender identity and what it means to be transgender and androgynous,<sup>40</sup> while the international women's rights organisation JASS conducted a discussion in Timor-Leste about LGBTIQ issues in 2011.<sup>41</sup>

**Restrictions on Demonstrations and Protests:** Despite the fact that the freedom of association and assembly is constitutionally protected, the 2004 Law on Freedom, Assembly and Demonstration prohibits demonstrations aimed at "questioning constitutional order" or disparaging the reputation of government officials.<sup>42</sup> The law also requires advanced authorisation for demonstrations and protests.<sup>43</sup> While these restrictions have generally not been enforced,<sup>44</sup> their mere existence nevertheless threatens the ability of HRDs working on LGBTIQ issues and the LGBTIQ community generally to operate freely and safely.

## Freedom of Opinion and Expression

**Criminal and Civil Sanctions:** Freedom of opinion and expression in Timor-Leste is limited. The 2009 Penal Code provides that a person cannot, while knowing of the "falsity of the accusation" cast "suspicion on a certain person regarding commission of a crime, with the

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<sup>36</sup> Shannon Power, "Timor Leste just had its first ever Pride March. Here are the 20 best photos", Gay Star News, 3 July 2017, available at <https://www.gaystarnews.com/article/timor-leste-just-first-ever-pride-march-20-best-photos/> (last visited 3 July 2017).

<sup>37</sup> "Freedom in the World: East Timor", Freedom House, 2016, available at <https://freedomhouse.org/report/freedom-world/2016/timor-leste> (last visited 6 July 2017).

<sup>38</sup> "Human Rights Report for 2013: Timor-Leste", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2014, p. 17, available at <http://www.state.gov/documents/organization/220447.pdf> (last visited 6 July 2017).

<sup>39</sup> Richard Ammon, "Gay Life in East Timor: Interview with Richa", Global Gayz, June 2015.

<sup>40</sup> Gabriela Gonzalez-Forward, "Transcending gender in Timor-Leste", The Dili Weekly, 15 July 2014, available at <http://www.thediliweekly.com/en/news/capital/12565-transcending-gender-in-timor-leste> (last visited 6 July 2017).

<sup>41</sup> Carrie Wilson, "Young Timorese Women Clear Up Confusion around LGBTI", JASS, 19 August 2011, available at <https://justassociates.org/en/blog/young-timorese-women-clear-confusion-around-lgbti> (last visited 6 July 2017).

<sup>42</sup> "Freedom in the World: East Timor", Freedom House, 2016.

<sup>43</sup> "Freedom in the World: East Timor", Freedom House, 2016.

<sup>44</sup> "Freedom in the World: East Timor", Freedom House, 2016.

intent of having criminal proceedings initiated against said person."<sup>45</sup> Furthermore, the Civil Code also provides for civil sanctions for false accusations and defamation.<sup>46</sup>

**Restrictions on Freedom of the Press:** The 2014 Media Law places specific constraints on the freedom of the press. It empowers the government-sponsored Press Council introduces a new licensing system enabling journalists' credentials to be revoked and restricting foreign investment in Timorese media; authorises the Press Council to fine journalists for "undesirable" reports, i.e., reports with "a slight to 'honour, dignity and privacy';"<sup>47</sup> and requires that all reporters have State accreditation.<sup>48</sup> The law also requires that journalists have certain qualifications and professional experience, setting a nearly impossible standard for a developing State.

It is noteworthy that literacy rates in Timor-Leste are low, and that as of 2015, only 13% of the population had internet access.<sup>49</sup> This puts radio journalists in a pivotal position to disseminate information nationwide. Moreover, since lack of awareness is a major obstacle to the promotion of LGBTIQ rights in Timor-Leste, the restrictions introduced by the Media Law have the potential to disproportionately hinder the advancement of LGBTIQ rights in the State.

## Right to Equality and Non-Discrimination

**Official Position on LGBTIQ Equality:** Timor-Leste has ostensibly been one of the most progressive countries in Southeast Asia in terms of its official support for statements affirming equality for LGBTIQ people. For instance, it was "the only Southeast Asian country to support the 2008 UN Statement on Human Rights, Sexual Orientation and Gender Identity."<sup>50</sup> Timor-Leste is also the only State in the region to sign the United Nations Human Rights Council's 2011 joint statement<sup>51</sup> on "Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity."<sup>52</sup> The Joint Statement obligates all signatories to

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<sup>45</sup> Article 285 (1) Defamatory false information, Decree Law No.19/2009, Penal Code, Democratic Republic of Timor-Leste, 2009, available at [https://www.unodc.org/res/cld/document/penal-code\\_html/Penal\\_Code\\_Law\\_No\\_19\\_2009.pdf](https://www.unodc.org/res/cld/document/penal-code_html/Penal_Code_Law_No_19_2009.pdf) (last visited 6 July 2017).

<sup>46</sup> "Freedom in the World: East Timor", Freedom House, 2016.

<sup>47</sup> Mark Skulley, "In Timor-Leste, hurt feelings could land journalists in jail", The Walkley Foundation, 1 August 2016, available at <http://www.walkleys.com/in-timor-leste-hurt-feelings-could-land-journalists-in-jail/> (last visited 7 July 2017).

<sup>48</sup> "Freedom in the World: East Timor", Freedom House, 2015, available at <https://freedomhouse.org/report/freedom-world/2015/east-timor> (last visited 6 July 2017).

<sup>49</sup> "Freedom in the World: East Timor", Freedom House, 2016.

<sup>50</sup> "Human Rights Protections for Sexual Minorities in Insular Southeast Asia: Issues and Implications for Effective HIV Prevention", UNESCO Bangkok, 2011, p. 72, available at <http://unesdoc.unesco.org/images/0021/002110/211087e.pdf> (last visited 6 July 2017).

<sup>51</sup> Kaleidoscope Australia, "The Human Rights of LGBTI Persons in Timor-Leste", 2016, para. 5, available at <http://sexualrightsinitiative.com/wp-content/uploads/Kaleidoscope-SRI-Joint-Submission-Timor-Leste-Oct-Nov-2016.pdf> (last visited 6 July 2017).

<sup>52</sup> "Joint Statement on Ending Acts of Violence Related Human Rights Violations Based on Sexual Orientation and Gender Identity (UN Human Rights Council)", Arc International, 22 March 2011, available at <http://arc-international.net/global-advocacy/human-rights-council/hrc16/joint-statement/> (last visited 6 July 2017).

end human rights abuses committed against people because of their sexual orientation or gender identity.

At the regional level, in November 2013, Timor-Leste voted in favour of the Asian and Pacific Declaration on Population and Development, which announced that members of the United Nations Economic and Social Commission for Asia and the Pacific will “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.”<sup>53</sup>

Echoing its international and regional stance, His Excellency the Prime Minister of Timor-Leste, Rui Maria de Araújo, published a statement during Pride 2017 declaring his support for the LGBTIQ community in Timor-Leste.<sup>54</sup> The Prime Minister also expressly condemned acts of discrimination or violence against the LGBTIQ community.<sup>55</sup>

**Influence of the Catholic Church:** In spite of Timor-Leste's official position on LGBTIQ issues and the assistance it has offered to some of the State's community-based LGBTIQ organisations,<sup>56</sup> it generally appears that measures to ensure LGBTIQ equality in practice are limited. It is reported that this may owe to the “very strong political and social influence” of the Catholic Church in Timor-Leste.<sup>57</sup> For example, a proposed constitutional provision against discrimination based on sexual orientation — included in the original draft of the Timorese Constitution — was voted down by 52 out of 88 Members of Parliament in 2002,<sup>58</sup> an act that some attribute in part to Church influence.<sup>59</sup>

**Limited Legal Protections:** Outside of the Constitution, there are also limited legal protections for LGBTIQ equality and non-discrimination in other laws in Timor-Leste. For instance, although the 2009 Penal Code identifies discrimination based on sexual orientation as an aggravating circumstance,<sup>60</sup> this protection does not explicitly extend to gender identity and intersex status.

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<sup>53</sup> *Report of the sixth Asian and Pacific Population Conference*, U.N. Doc. E/ESCAP/APPC(6)/3, 18 November 2013, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/B13/007/90/PDF/B1300790.pdf?OpenElement> (last visited 6 July 2017).

<sup>54</sup> “Official statement ‘Familia Simu Joven LGBT iha Timor-Leste’”, YouTube video, Timor One HD, 28 June 2017, available at <https://www.youtube.com/watch?v=t5y01VVNg8&feature=youtu.be&app=desktop> (last visited 3 July 2017).

<sup>55</sup> Shannon Power, “Timor Leste PM comes out supporting LGBTI rights”, Gay Star News, 3 July 2017, available at <https://www.gaystarnews.com/article/timor-leste-pm-comes-supporting-lgbti-rights/> (last visited 3 July 2017).

<sup>56</sup> Gabriela Gonzalez-Forward, “Transcending gender in Timor-Leste”, *The Dili Weekly*, 15 July 2014.

<sup>57</sup> “Religious Freedom in the World Report: East Timor”, Aid to the Church in Need, 2015, page 2, available at [http://religion-freedom-report.org.uk/wp-content/uploads/country-reports/east\\_timor.pdf](http://religion-freedom-report.org.uk/wp-content/uploads/country-reports/east_timor.pdf) (last visited 5 July 2017).

<sup>58</sup> “Human Rights Protections for Sexual Minorities in insular Southeast Asia: Issues and Implications for Effective HIV Prevention”, UNESCO Bangkok, 2011, p. 44.

<sup>59</sup> “Homosexuality in East Timor”, East Timor Law and Justice Bulletin, 25 April 2009, available at <http://www.easttimorlawandjusticebulletin.com/2009/04/homosexuality-in-east-timor.html> (last visited 6 July 2017).

<sup>60</sup> Article 52 of the Penal Code states “(2) General aggravating circumstances may include the following: (e) The crime is motivated by racism, or any other discriminatory sentiment on grounds of gender, ideology,

In addition, Timor-Leste's 2012 Labour Code abolished an earlier prohibition on employment discrimination based on sexual orientation.<sup>61</sup> This step backwards leaves workers of diverse sexuality vulnerable to discrimination and harassment, as well as interfering with their right to work.<sup>62</sup>

**Instances of Discrimination and Violence:** Timor-Leste has also generally failed to address reports of discrimination and violence against LGBTIQ community members.<sup>63</sup> Data gathered in 2014 from 198 transgender and gay people in Timor-Leste showed that "27% reportedly had experienced physical maltreatment, 35% had been verbally maltreated, 31% had been refused access to health care services and 25% were provided with poor quality health services."<sup>64</sup>

In particular, there have been reports of discrimination against transgender people and homosexual men when accessing health checks in hospitals and clinics.<sup>65</sup> There are also multiple reports of violence and police abuses against transgender people. For instance, in October 2014, a transgender woman was stabbed and beaten by her brother "after suffering physical violence at the hands of her family." When she reported these incidents to the police, she received ridicule instead of assistance.<sup>66</sup>

**Reforms Introduced:** In line with recommendations it accepted in both its first and second UPRs,<sup>67</sup> Timor-Leste has taken steps to address incidents of excessive use of force, as well as ill-treatment and abuse by police and the military.<sup>68</sup> One such step has been the introduction of human rights training for police.<sup>69</sup> In addition, as of early 2016, Timor-Leste's NHRI, the Provedoria, was in discussions with the Chief of the Armed Forces and the Minister of Defence concerning human rights training for the military.<sup>70</sup> Nevertheless, reports of excessive use of force, ill-treatment and arbitrary arrest, continue to form the majority of human rights complaints received by the Provedoria.<sup>71</sup>

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religion or beliefs, ethnicity, nationality, sex, sexual orientation, illness or physical disability of the victim." *For the full text of Decree Law No. 19/2009, see "Decree Law No.19/2009", Democratic Republic of Timor-Leste, 2009, available at [https://www.unodc.org/res/cld/document/penal-code\\_html/Penal\\_Code\\_Law\\_No\\_19\\_2009.pdf](https://www.unodc.org/res/cld/document/penal-code_html/Penal_Code_Law_No_19_2009.pdf) (last visited 6 July 2017).*

<sup>61</sup> "The Human Rights of LGBTI Persons in Timor-Leste", Kaleidoscope Australia, 2016, paras. 19-20.

<sup>62</sup> "The Human Rights of LGBTI Persons in Timor-Leste", Kaleidoscope Australia, 2016, para. 20.

<sup>63</sup> Gabriela Gonzalez-Forward, "Transcending gender in Timor-Leste", *The Dili Weekly*, 15 July 2014.

<sup>64</sup> "Report for the Universal Periodic Review of Timor-Leste", United Nations Country Team in Timor Leste, 23 March 2016, para. 14, available at <https://www.laohamutuk.org/Justice/UPR/2016/UNCTUPRMar2016en.pdf> (last visited 6 July 2017).

<sup>65</sup> Gabriela Gonzalez-Forward, "Transcending gender in Timor-Leste", *The Dili Weekly*, 15 July 2014.

<sup>66</sup> "The Human Rights of LGBTI Persons in Timor-Leste", Kaleidoscope Australia, 2016, para. 9.

<sup>67</sup> First UPR cycle: *Report of the Working Group*, Timor-Leste, paras. 78.20-78.23.

<sup>68</sup> "Report for the Universal Periodic Review of Timor-Leste", UN Country Team in Timor Leste, 23 March 2016, para. 16; Second UPR cycle: *Report of the Working Group*, Timor-Leste, paras. 89.80, 89.109-89.113.

<sup>69</sup> Second UPR cycle: *Report of the Working Group*, Timor-Leste, para. 16.

<sup>70</sup> "Report for the Universal Periodic Review of Timor-Leste", UN Country Team in Timor Leste, 23 March 2016, para. 16; Second UPR cycle: *Report of the Working Group*, Timor-Leste, para. 89.41.

<sup>71</sup> "Report for the Universal Periodic Review of Timor-Leste", UN Country Team in Timor Leste, 23 March 2016, para. 17.

Timor-Leste has also begun the process of drafting a national human rights action plan, as recommended in its first UPR.<sup>72</sup> The process, which began in 2014, stalled because of insufficient resources.<sup>73</sup> As of March 2016, the Ministry of Justice, which is leading the process, had begun reviewing ways of resuming the initiative,<sup>74</sup> although it is unclear whether the plan is completed. With this plan in mind, recommendations in the second UPR cycle in November 2016 encouraged Timor-Leste to ensure effective implementation of the national action plan.<sup>75</sup>

## Conclusion

Since its first UPR cycle, Timor-Leste has accepted all recommendations from various States. The State has committed to protecting human rights and freedoms for its citizens and accepted many recommendations encouraging Timor-Leste to increase resources and supports for human rights mechanisms. While Timor-Leste has also accepted the recommendation to define marriage between a man and woman, excluding other types of marriages, the State has stated that all persons are equal before the law. In general, Timor-Leste has demonstrated its willingness to address the concerns and recommendations expressed by various States.

However, HRDs and LGBTIQ people may still be vulnerable to ill-treatment in practice. Timor-Leste's laws include restrictions on demonstrations and freedom of expression. The freedom of the press in particular is jeopardised by the stringent requirements of the recent Media Law, which may disproportionately hinder LGBTIQ rights in the State given the influential role that the media plays in disseminating information in Timor-Leste. A concerning recent reform to the Labour Code removes a previous protection it contained prohibiting discrimination on the basis of sexual orientation, while there also remain reports of violence and police brutality against the LGBTIQ community.

Nevertheless, Timor-Leste's remains demonstrably open to UPR recommendations. Its official position consistently supports LGBTIQ equality. The State has also initiated human rights reforms, including training for its police and the preparation of a national human rights action plan. Therefore, there would appear to be several promising avenues through which to engage with Timor-Leste on improving conditions for its LGBTIQ community and HRDs working on LGBTIQ-related issues.

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<sup>72</sup> First UPR cycle, *Report of the Working Group*, para. 78.3.

<sup>73</sup> "Report for the Universal Periodic Review of Timor- Leste", UN Country Team in Timor Leste, 23 March 2016, para. 10.

<sup>74</sup> "Report for the Universal Periodic Review of Timor- Leste", UN Country Team in Timor Leste, 23 March 2016, para. 10.

<sup>75</sup> Second UPR cycle: *Report of the Working Group*, Timor-Leste, paras. 89.50-89.52, 89.54.

## Recommendations

In the lead-up to the third UPR review of Timor-Leste in October/November 2021:

- CSOs should actively engage in monitoring the implementation of those recommendations Timor-Leste accepted during the first two UPR cycles so as to gather relevant data on the improvement of the human rights situation in the country and to report at the third UPR cycle.
- CSOs should continue documenting violations and abuses endured by LGBTIQ people and their defenders so as to provide recommending states and the relevant UN mechanisms with solid evidence-based information.
- CSOs and recommending states should work collaboratively to develop UPR recommendations for the third cycle that emphasise the benefit to Timor-Leste of removing existing legal barriers to the full exercise of fundamental freedoms in the country, and of strengthening its labour law protections for LGBTIQ people.

## Timor-Leste: LGBTIQ HRD Interview

Human Rights of LGBTIQ  
Communities and HRDs:  
Frontline Voices



### **Feliciano da Costa Araujo, President, Coalition for Diversity and Action (CODIVA)**

#### **How did you become involved in LGBTIQ rights work?**

I have worked with NGOs since 2007 and I have the capacity to advocate for land rights and cooperation with human rights institutions in Timor-Leste. Initially I applied for a job with ISEAN HIVOS in Southeast Asia. So I started to work with ISEAN HIVOS and learned about the LGBTIQ community issues, particularly with MSM and transgenders. So I started there in February 2013. And in May of the same year I enrolled Fundasaun CODIVA as organisations working for LGBTIQ issues in Timor-Leste. I

then became president of my organisation, CODIVA, working on HIV issues in Timor-Leste. Now, we are still building a defender of human rights for civil society in Timor-Leste, particularly for LGBTIQ people.

#### **What have been the biggest challenges you've faced in advocating for LGBTIQ rights?**

My concern is that the LGBTI community is not united. So, we as an advocate for their rights, we are working for them and lobbying our government, but the LGBTIQ community itself is not united. It's a big problem for me. It is difficult to promote the community.

#### **What have been the most successful strategies or techniques you've used to create positive change?**

In Timor-Leste, at the moment, we have the SOGIE Caravan. It's like a campaign to the districts. We are joined together with other organisations that work for human rights. The first time we used the SOGIE Caravan was in the Timor-Leste city, Dili — we did it at the university, for university students and youth. We also collaborated with the ombudsman to work together and socialise information for the national police in the districts. I think it's better for us to change the minds and behaviours of the general community, including my government.

**Have you ever felt personally at risk because of your work?**

Honestly, I've never felt at risk when talking about LGBT issues. But sometimes, I have it, because when you talk about human rights, some people don't understand and sometimes I feel danger for myself. But honestly, Timor-Leste is not a big country, we know each other, we can say things, and we have strong cooperation with the other human rights institutions.

We have regular meetings every three months, under the United Nations Development Programme. They invite the organisations to talk about human rights, specific issues, so my organisation has done that before. They invite us to talk about existence of the LGBT community in Timor-Leste, so I have presented to them before.

**How have things have changed over the past few years regarding LGBTIQ rights and being a human rights defender in Timor-Leste?**

Now, honestly, we are still in the process of learning how to promote the existence of the LGBT community in my country. So, my observation for the other CSOs is that they are very cooperative with us. When we talk about LGBT issues, they are interested with how to discuss it with us. I hope, not only for now, but the future, that maybe we can change and more people can talk about how to protect and defend LGBT issues in Timor-Leste.

**Does your government do enough to protect LGBTIQ rights?**

In Timor-Leste, we have the Constitution to protect all people from violence and discrimination. For example, my organisation uses Article 16 in the Constitution, which prohibits violence and discrimination. So the other thing is that we already ratified seven human rights conventions. I think civil society can also do the job of monitoring and providing feedback to the government. So we have the constitution, we've ratified many UN conventions, and we also have the civil code.

Sometimes, the LGBT community, especially transgender people, have difficulty accessing information about justice. So now we are providing information on how to access justice.

**Do you think the UPR recommendations have an impact on your country? Do you think the recommendations lead your government to change policies to strengthen human rights protections?**

Of course, yes. I want to share with you my experience. When we prepared for the CEDAW report and the Child Protection report, the government of Timor-Leste was very interested in cooperating with civil society. They also shared with us the reports they prepare for these bodies. This is my experience.

**Does civil society know how to use the UPR recommendations for advocacy in Timor-Leste?**

Yes, of course. Timor-Leste, my members of the government, we know each other. It is a



small country and we know each other. So it is very easy to follow up with parliamentarians when they have already ratified or submitted a report, or received recommendations. It is easy to follow up, talk with them, work with them.

**What gives you hope when looking to the future of LGBTIQ rights in Timor-Leste?**

Timor-Leste is a small country, and the population is not a lot of people, and we get to know each other, so it's easy for us to

discuss issues about LGBT. Honestly, I hope that in three to four years, the community will understand and feel an honour for themselves. The issue is not only for civil society, but the general community.

In Timor-Leste, only my organisation works on LGBT issues. But when we talk about human rights, there are more organisations. But for the specific issues of LGBT, there is only CODIVA. So we hope to get more networks, not only in ASEAN but the Pacific region.

# Viet Nam: Country Profile

## Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

### Introduction

#### UPR Cycles

**First UPR Cycle:** 8 May 2009

**Second UPR Cycle:** 5 February 2014

**Third UPR Cycle:** January/February 2019

Issues related to the lesbian, gay, bisexual, transgender, intersex, and queer (**LGBTIQ**) community and human rights defenders (**HRDs**) were raised more generally in the first Universal Periodic Review (**UPR**) cycle for Viet Nam and more explicitly and extensively in the

second UPR. While most recommendations in the first UPR did not enjoy Viet Nam's support — except for a recommendation to ensure citizens can fully enjoy freedoms of expression and religion — Viet Nam accepted many recommendations in the second UPR. These related to combating discrimination on the basis of sexual orientation or gender identity, supporting more freedoms of expression and assembly for non-governmental organisations (**NGOs**) and individuals, and creating a national human rights mechanism.

This Country Profile details the significant progress Viet Nam has made in terms of the conditions of its LGBTIQ community. Most strikingly has been Viet Nam's recognition of the equality of transgendered people. Progress has also been made in terms of the right to work and the right to freely and fully participate in the cultural life of the community. HRDs working on LGBTIQ issues have also been able to enjoy far greater freedoms of opinion, expression and assembly than other HRDs in Viet Nam, with an increasing number of LGBTIQ-focused events being successfully and safely staged.

As indicated in the recommendations outlined at the end of this chapter, civil society organisations (**CSOs**) and recommending States have an opportunity, in the lead-up to Viet Nam's third UPR cycle in January/February 2019 (and, in particular, the submission of

"The UPR has a big impact on my country because in the first round of the UPR, Viet Nam kept its vote and disagreed with the recommendations. But [in the second UPR], they said yes to the UPR and its recommendations. When they agree with the UPR, they change the laws and they want to bring equality for the LGBT people."

**Khoa (Teddy) Nguyen,  
Community Leader**

stakeholder reports by 21 June 2018),<sup>1</sup> to work towards developing improved UPR recommendations that focus on the benefit to Viet Nam of reforms to ensure greater legal protections for fundamental freedoms.

## Past UPR Cycles for Viet Nam

### First UPR Cycle (8 May 2009)

**National Report Filed:**<sup>2</sup> Viet Nam's national report for the first UPR cycle was published on 16 February 2009. It did not mention the LGBTIQ community or HRDs explicitly. On fundamental freedoms, the report suggested generally that the media in Viet Nam was a forum for the expression of views by mass organisations and the people, and "an important force in the check and oversight over the implementation of policies and laws by State authorities."<sup>3</sup> Viet Nam's report also stated that freedom of expression, press, and information of the Vietnamese people was demonstrated through the "rapid and diverse development of the mass media."<sup>4</sup>

**Stakeholders Submissions Made:**<sup>5</sup> The summary of the 12 stakeholders' submissions was published on 23 February 2009. Stakeholders did not mention the LGBTIQ community or HRDs working on LGBTIQ issues either. Stakeholders did, however, report that Viet Nam systematically suppressed peaceful assembly<sup>6</sup> and used the Penal Code to stifle freedom of expression.<sup>7</sup> Stakeholders called on Viet Nam to amend its domestic legislation to ensure freedom of expression and assembly.<sup>8</sup>

#### First UPR Cycle for Viet Nam: Recommendations Received

In its first UPR, held in May 2009, Viet Nam received the following general recommendations that impact on the LGBTIQ community and their defenders:

- Continue efforts to improve all political as well as economic, social and cultural rights in conformity with the universally agreed human rights standards and norms (Egypt).

<sup>1</sup> "3rd UPR cycle: contributions and participation of 'other stakeholders' in the UPR", OHCHR, 22 May 2017, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx> (last visited 21 August 2017).

<sup>2</sup> *National Report Submitted in Accordance with Paragraph (15)(a) of the Annex to the Human Rights Council Resolution 5/1: Viet Nam*, U.N. Doc. A/HRC/WG.6/5/VNM/1, 16 February 2009, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/VN/A\\_HRC\\_WG6\\_5\\_VNM\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/VN/A_HRC_WG6_5_VNM_1_E.pdf) (last visited 29 June 2017).

<sup>3</sup> First UPR cycle: *National Report*, Viet Nam, para. 9.

<sup>4</sup> First UPR cycle: *National Report*, Viet Nam, para. 25.

<sup>5</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Viet Nam*, U.N. Doc. A/HRC/WG.6/5/VNM/3, 23 February 2009, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/VN/A\\_HRC\\_WG6\\_5\\_VNM\\_3\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/VN/A_HRC_WG6_5_VNM_3_E.pdf) (last visited 29 June 2017).

<sup>6</sup> First UPR cycle: *Stakeholders' Summary*, Viet Nam, para. 35.

<sup>7</sup> First UPR cycle: *Stakeholders' Summary*, Viet Nam, para. 36.

<sup>8</sup> First UPR cycle: *Stakeholders' Summary*, Viet Nam, para. 37.

- Reinforce advocacy and information measures through specific human rights education and training programmes (Morocco) and continue efforts aimed at the promotion and protection of human rights (Benin).
- Take the necessary steps to ensure that citizens can fully enjoy the rights to freedom of expression and freedom of religion (Argentina).
- Continue to build policy dialogue between the Government and independent civil society organisations (United Kingdom).
- Further efforts to engage all appropriate social and political organisations in the promotion and protection of human rights (Democratic People's Republic of Korea, Russian Federation).
- Fully guarantee the right to receive, seek and impart information and ideas in compliance with article 19 of ICCPR (Italy).
- Take steps to ensure that full respect for the freedom of expression, including on the Internet, is implemented in current preparations for media law reform (Sweden).
- Strengthen efforts in the areas of civil and political freedoms, including freedom of expression and the press and freedom of religion (Republic of Korea).
- Take all necessary measures to end restrictions on the rights to freedom of expression and peaceful assembly (Canada, Norway, Finland, Germany, France).
- Adopt various measures for prevention and early diagnosis of transmissible diseases and pandemics, notably HIV/AIDS [i.e., Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome], by giving priority to vulnerable groups, particularly national minorities, the poor and sex workers (Benin).
- Continue to make further efforts to advance the human rights of socially vulnerable people (Japan, Cambodia).
- Establish a national human rights institution in compliance with the Paris Principles (Mexico, Azerbaijan, New Zealand).

**Source:** *Report of the Working Group on the Universal Periodic Review: Viet Nam*, U.N. Doc. A/HRC/12/11, 5 October 2009, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/163/82/PDF/G0916382.pdf?OpenElement> (last visited 29 June 2017).

**Comments Received; Response to Recommendations:** During the Interactive Dialogue, Viet Nam also received a specific comment from Norway recommending that Viet Nam adopt appropriate measures to disseminate widely and ensure full observance of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (**DHRD**).<sup>9</sup> Viet Nam did not respond to this comment.

<sup>9</sup> First UPR cycle: *Report of the Working Group*, Viet Nam, para. 41.

Viet Nam accepted the recommendation from Argentina that it take the necessary steps to ensure that citizens can fully enjoy the rights to freedom of expression and freedom of religion.<sup>10</sup> At the same time, however, Viet Nam did not support the recommendations which aimed to end restrictions on freedom of expression and freedom of assembly.<sup>11</sup> Viet Nam did not offer an explanation for its seemingly contradictory approach on the regulation of the freedom of expression.

On the general promotion and protection of human rights, Viet Nam accepted a recommendation to engage all appropriate social and political organisations in such promotion.<sup>12</sup> Viet Nam also accepted a recommendation to reinforce advocacy in human rights training and offer better health protection and human rights education to vulnerable groups.<sup>13</sup> At the same time, Viet Nam did not support a recommendation that it build a policy dialogue between the government and CSOs,<sup>14</sup> or that it create a national human rights institution in accordance with the Paris Principles.<sup>15</sup>

## Second UPR Cycle (5 February 2014)

**National Report Filed:**<sup>16</sup> Viet Nam's national report for the second UPR cycle was published on 8 November 2013. The report did not mention HRDs or the LGBTIQ community. On freedom of expression, the report focused on the existence of mass media to illustrate the freedom of expression possessed by its citizens.<sup>17</sup> The report also referred to the number of associations in Viet Nam as demonstrating the existence of freedom of association and assembly.<sup>18</sup>

**Stakeholders Submissions Made:**<sup>19</sup> The summary of the 59 stakeholders' submissions was published on 4 November 2013. Stakeholders explicitly discussed both the LGBTIQ community and HRDs. On the LGBTIQ community, stakeholders recommended that Viet Nam enact an anti-discrimination law that would ensure equality of all people regardless of sexual orientation and gender identity.<sup>20</sup>

On HRDs, stakeholders expressed concerns over the number of cases of HRDs being arbitrarily arrested, not informed of the reasons for arrest, denied access to lawyers and families for several weeks, denied bail, and with the HRDs' lawyers facing harassment or

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<sup>10</sup> First UPR cycle: *Report of the Working Group*, Viet Nam, para. 99.44.

<sup>11</sup> First UPR cycle: *Report of the Working Group*, Viet Nam, paras. 35, 41, 63, 65, 85, 102.

<sup>12</sup> First UPR cycle: *Report of the Working Group*, Viet Nam, paras. 99.14-99.15.

<sup>13</sup> First UPR cycle: *Report of the Working Group*, Viet Nam, paras. 99.13, 99.18, 99.29, 99.59, 99.71.

<sup>14</sup> First UPR cycle: *Report of the Working Group*, Viet Nam, paras. 51, 102.

<sup>15</sup> First UPR cycle: *Report of the Working Group*, Viet Nam, paras. 51, 55, 56, 59, 102.

<sup>16</sup> *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Viet Nam*, U.N. Doc. A/HRC/WG.6/18/VNM/1, 8 November 2013, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/185/15/PDF/G1318515.pdf?OpenElement> (last visited 29 June 2017).

<sup>17</sup> Second UPR cycle: *National Report*, Viet Nam, paras. 25-30.

<sup>18</sup> Second UPR cycle: *National Report*, Viet Nam, paras. 35-36.

<sup>19</sup> *Summary of Stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights: Viet Nam*, U.N. Doc. A/HRC/WG.6/18/VNM/3, 4 November 2013, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/183/23/PDF/G1318323.pdf?OpenElement> (last visited 29 June 2017).

<sup>20</sup> Second UPR cycle: *Stakeholders' Summary*, Viet Nam, para. 8.

disbarment.<sup>21</sup> The report also advised that high-profile HRDs or HRDs under surveillance were routinely prevented from going abroad, prevented from travelling upon their release, or those under probation being prevented from traveling outside designated areas and denied passports.<sup>22</sup> Stakeholders recommended Viet Nam refrain from harassing, threatening, criminalising or arresting HRDs for reasons connected to their peaceful activities, including the legitimate exercise of freedom of expression.<sup>23</sup>

### **Second UPR Cycle for Viet Nam: Recommendations Received**

In its second UPR, held in February 2014, Viet Nam received the following specific recommendations on HRDs, sexual orientation, and gender identity for the first time:

- Enact a law to fight against discrimination which guarantees the equality of all citizens, regardless of their sexual orientation and gender identity (Chile).
- Ensure a favourable environment for the activities of HRDs, journalists and other civil society actors (Tunisia).
- Give individuals, groups and organs of society the legitimacy and recognition to promote human rights and express their opinions or dissent publicly (Norway).
- Further implement measures to promote the freedoms of expression, association, assembly and freedom of the media in line with the most advanced international standards (Italy, Lithuania, Belgium, Japan, Poland, Chile, France).
- Take measures to ensure the effective protection of the right to freedom of expression and information, as well as the independence of the media, and release all human rights defenders, journalists, and religious and political dissidents detained for the peaceful expression of their opinion (Czech Republic).
- Take the necessary measures to protect freedom of expression and press freedom, including through the Internet (Brazil).
- Continue appropriate measures to ensure the realisation of the socio economic rights (Islamic Republic of Iran, Madagascar) especially by increasing resources to ensure social security and welfare of its citizens as well as the rights of vulnerable groups (Brunei Darussalam, Myanmar, Russian Federation).
- Consider establishing a national human rights institution (Thailand, Morocco, Niger) in accordance with the Paris Principles (Portugal, Spain, Congo, France, Madagascar, Togo).
- Encourage strengthening of NGOs by promoting a legal, administrative and fiscal framework in which such institutions can be created and developed and perform their activities without any obstacles and with freedom of expression (Spain).

<sup>21</sup> Second UPR cycle: *Stakeholders' Summary*, Viet Nam, para. 21.

<sup>22</sup> Second UPR cycle: *Stakeholders' Summary*, Viet Nam, para. 40.

<sup>23</sup> Second UPR cycle: *Stakeholders' Summary*, Viet Nam, para. 52.

**Source:** *Report of the Working Group on the Universal Periodic Review: Viet Nam*, U.N. Doc. A/HRC/26/6, 2 April 2014, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/129/10/PDF/G1412910.pdf?OpenElement> (last visited 29 June 2017).

**Comments Received; Response to Recommendations:** During the Interactive Dialogue, Viet Nam also received specific comments welcoming its progress on protecting the rights of LGBTIQ people<sup>24</sup> and commending Viet Nam on its decision to decriminalise homosexuality.<sup>25</sup> Viet Nam advised that one of its post-2015 agendas was to improve results achieved in social equity.<sup>26</sup> In a similar vein, Viet Nam accepted the recommendation to combat discrimination based on sexual orientation and gender identity.<sup>27</sup> Similarly, every recommendation on the protection and development of the rights of vulnerable groups enjoyed Viet Nam's support.<sup>28</sup>

Likewise, Viet Nam also accepted the recommendation calling for enhanced protection of HRDs, promotion of a safe environment for HRDs, and a larger space to exercise their freedom of expression.<sup>29</sup> However, Viet Nam did not support the recommendation from the Czech Republic requesting Viet Nam to release dissident HRDs detained for expressing their opinions.<sup>30</sup> On fundamental freedoms more generally, Viet Nam accepted recommendations that more broadly sought increased freedom of expression and the media, freedom of assembly and the strengthening of NGOs.<sup>31</sup>

Finally, Viet Nam accepted recommendations seeking the creation of a national human rights institution.<sup>32</sup> However, it did not support the recommendation that such an institution be established in conformity with the Paris Principles.<sup>33</sup>

<sup>24</sup> Second UPR cycle: *Report of the Working Group*, Viet Nam, para. 51.

<sup>25</sup> Second UPR cycle: *Report of the Working Group*, Viet Nam, para. 106.

<sup>26</sup> Second UPR cycle: *Report of the Working Group*, Viet Nam, para. 61.

<sup>27</sup> Second UPR cycle: *Report of the Working Group*, Viet Nam, para. 143.88.

<sup>28</sup> Second UPR cycle: *Report of the Working Group*, Viet Nam, paras. 143.47-143.49, 143.54, 143.56, 143.79, 143.124, 143.187, 143.194, 143.223.

<sup>29</sup> Second UPR cycle: *Report of the Working Group*, Viet Nam, paras. 143.160, 143.162, 143.167.

<sup>30</sup> Second UPR cycle: *Report of the Working Group*, Viet Nam, para. 143.60; *Report of the Working Group on the Universal Periodic Review: Viet Nam, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/26/6/Add.1, 20 June 2014, para. 2, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/059/36/PDF/G1405936.pdf?OpenElement> (last visited 6 July 2017).

<sup>31</sup> Second UPR cycle: *Report of the Working Group*, Viet Nam, paras. 143.144-143.147, 143.58-143.59, 143.171-143.172.

<sup>32</sup> Second UPR cycle: *Report of the Working Group*, Viet Nam, paras. 143.35-143.39, 143.43.

<sup>33</sup> Second UPR cycle: *Report of the Working Group*, Viet Nam, paras. 143.40-143.42; Second UPR cycle: *Report of the Working Group, Addendum*, Viet Nam, para. 2.

## Situation of the LGBTIQ Community and its HRDs in Viet Nam

### Right to Equality and Non-Discrimination

In January 2017, Viet Nam implemented amendments to its Civil Code<sup>34</sup> that give transgendered people the same rights as cisgendered persons of the same gender expression.<sup>35</sup> This law is the most progressive in Southeast Asia in terms of recognising the equality of transgendered people, and it came about as the result of efforts by government agencies. In August 2015, the Ministry of Health urged Viet Nam's government to legalise same-sex reassignment<sup>36</sup> and reform the Civil Code to simplify the process for transgender people to officially change their name and gender identification.<sup>37</sup> Later that month, various members of the National Assembly legal committee joined the Ministry of Health to "urgell the government to recognise gender reassignment as a human right."<sup>38</sup> Public demonstrations were also staged in support of the proposed reforms.<sup>39</sup>

The Vietnamese government's amendment of the Civil Code partially implements a recommendation from Chile which Viet Nam accepted in its second UPR.<sup>40</sup> This recommendation called on Viet Nam to guarantee the equality of all citizens, regardless of either gender identity or sexual orientation. Thus, to fully implement the recommendation, sexual orientation should also be included in the Code.

### Freedom of Opinion and Expression, Association and Assembly, and the Right to Freely Participate in the Cultural Life of the Community

**Pride Celebrations:** Viet Nam's LGBTIQ community has become far more visible in recent years, and increasingly able to exercise fundamental freedoms of opinion, expression and assembly. Viet Nam's pride parade, now known as and hosted by VietPride, has become increasingly prominent since the inaugural parade in 2012.<sup>41</sup> The first of its kind in Viet Nam, 100 people joined the parade and peacefully demonstrated in the streets of Hanoi. While the

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<sup>34</sup> "Vietnamese law to recognize transgender people in 2017", VnExpress, 17 December 2016, available at <http://e.vnexpress.net/news/news/vietnamese-law-to-recognize-transgender-people-in-2017-3515044.html> (last visited 3 July 2017).

<sup>35</sup> Anh Vu & Khanh An, "Vietnam recognizes transgender rights in breakthrough vote", Thanh Nien News, 24 November 2015, available at <http://www.thanhniennews.com/politics/vietnam-recognizes-transgender-rights-in-breakthrough-vote-54168.html> (last visited 11 July 2017).

<sup>36</sup> "Vietnam health officials want to legalize gender reassignment surgery", Thanh Nien News, 13 August 2015, available at <http://www.thanhniennews.com/society/vietnam-health-officials-want-to-legalize-gender-reassignment-surgery-50047.html> (last visited 11 July 2017).

<sup>37</sup> "Viet Nam health officials want to legalize gender reassignment surgery", Thanh Nien News, 13 August 2015.

<sup>38</sup> Truong Son, "Vietnam's lawmakers support gender reassignment, call it basic human right", Thanh Nien News, 20 August 2015, available at <http://www.thanhniennews.com/politics/vietnams-lawmakers-support-gender-reassignment-call-it-basic-human-right-50445.html> (last visited 11 July 2017).

<sup>39</sup> "Vietnamese law to recognize transgender people in 2017", VnExpress, 17 December 2016, available at <http://e.vnexpress.net/news/news/vietnamese-law-to-recognize-transgender-people-in-2017-3515044.html> (last visited 11 July 2017).

<sup>40</sup> Second UPR cycle: *Report of the Working Group*, Viet Nam, para. 143.88.

<sup>41</sup> "Human Rights Reports for 2012: Vietnam", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2013, p. 44, available at <https://www.state.gov/documents/organization/204463.pdf> (last visited 9 July 2017).



organisers were denied permission to host the demonstration, no incidents occurred when the event nevertheless went ahead.

In 2013, participation in Viet Nam's pride parade increased to 200 activists.<sup>42</sup> In 2014, this number reached over 300,<sup>43</sup> and in 2015, over 400.<sup>44</sup> In 2015, a separate pride rally was hosted in Ho Chi Minh City to celebrate the legalisation of same-sex marriage in the US, which more than 5,000 people attended.<sup>45</sup> In 2016, VietPride was hosted in Hanoi, though the number of attendees is unreported.<sup>46</sup> In 2017, Viet Pride and Hanoi Pride plan to host events across the State to celebrate Pride from July until October.<sup>47</sup>

**IDAHOT Celebrations:** A series of events have also been hosted in Viet Nam's four largest cities to celebrate the International Day Against Homophobia, Transphobia and Biphobia (IDAHOT). These events, collectively known as "Awakening to the Rainbow", attracted more than 10,000 participants.<sup>48</sup>

**Participation in Cultural Life:** Since 2016 in particular, Viet Nam's LGBTIQ community has become increasingly engaged in Viet Nam's cultural life. In June 2016, the SEA Pride music festival showcased the region's musical diversity, creating a safe space to celebrate LGBTIQ diversity and promote workplace diversity.<sup>49</sup> In July 2016, a young Vietnamese LGBTIQ rights activist was selected to take part in the YouthSpeak Ambassador Campaign. This campaign, designed by the International Youth Organisation AIESEC in Viet Nam and the Viet Nam

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<sup>42</sup> "Activists parade for gay rights in Vietnam", Malay Mail Online, 4 August 2013, available at <http://www.themalaymailonline.com/world/article/activists-parade-for-gay-rights-in-vietnam> (last visited 9 July 2017).

<sup>43</sup> "Country Reports on Human Rights Practices for 2014: Vietnam", U.S. Department of State: Bureau of Democracy, Human Rights and Labor, 2014, p. 42, available at <https://www.state.gov/documents/organization/236702.pdf> (last visited 9 July 2017).

<sup>44</sup> Tan Qiuyi, "Hundreds brave persistent rain at LGBT rally in Vietnam", Channel News Asia, 2 August 2015, available at <http://www.channelnewsasia.com/news/asiapacific/hundreds-brave-persistent/2024238.html> (last visited 9 July 2017).

<sup>45</sup> Minh Hung, "LGBT parade draws huge crowd in downtown Saigon", Thanh Nien News, 29 June 2015, available at <http://www.thanhniennews.com/society/lgbt-parade-draws-huge-crowd-in-downtown-saigon-47285.html> (last visited 9 July 2017).

<sup>46</sup> "LGBT Festival Viet Pride Hanoi 2016 kicks off next week", Tuoi Tre News, 11 November 2016, available at <http://tuoitrenews.vn/lifestyle/36443/lgbt-festival-viet-pride-hanoi-2016-kicks-off-next-week> (last visited 9 July 2017).

<sup>47</sup> "VietPride 2017", Facebook Page, 1 June 2017, available at <https://www.facebook.com/vietpride.vn/> (last visited 9 July 2017); "Hanoi Pride 2017", Facebook Page, 2017, available at <https://www.facebook.com/VietPride.info/> (last visited 9 July 2017).

<sup>48</sup> "Being LGBT in Asia: Viet Nam Country Report", United Nations Development Programme, 2014, pp. 22, 39, available at [https://www.usaid.gov/sites/default/files/documents/1861/Being\\_LGBT\\_in\\_Asia\\_Vietnam\\_Country\\_Report.pdf](https://www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Vietnam_Country_Report.pdf) (last visited 11 July 2017).

<sup>49</sup> "SEA Pride Music Festival 2016", Vietnam Breaking News, 5 July 2016, available at <https://m.vietnambreakingnews.com/2016/07/sea-pride-music-festival-2016/> (last visited 11 July 2017); "SEA Pride music festival to honour diversity", Viet Nam News, 16 June 2016, available at <http://vietnamnews.vn/lifestyle/298241/sea-pride-music-festival-to-honour-diversity.html#EYCyDAobitzSfZwc.gq> (last visited 11 July 2017).

Chamber of Commerce and Industry, encourages youth to challenge societal norms and create positive change.<sup>50</sup>

That same year, it was reported that 200 local youth gathered in Hanoi's Cau Giay District to express their support for the LGBTIQ community by hosting a community dance performance.<sup>51</sup> In addition, in August 2016, the first Human Library project opened in Hanoi's Labour and Society College, which encouraged people to tell their stories to an audience. Among other individuals, a transwoman and 'bi-gender' person shared their stories openly with the audience.<sup>52</sup> On 16 and 17 September in 2017, Queer Forever hosted an intimate series of film screenings and discussions projecting voices of the LGBTIQ community.<sup>53</sup> Most recently, hundreds of individuals gathered in Ho Chi Minh City to celebrate the new law recognising the rights of transgender people.<sup>54</sup>

By allowing such a wide range of events to operate freely, Viet Nam has effectively allowed greater freedom of expression, association and assembly, as well as the right to freely participate in the community. This fulfils various relevant recommendations Viet Nam received during its first and second UPRs. Moreover, while Viet Nam accepted the majority of these recommendations, some of the recommendations which it did not support - but appears to have adhered to in practice - were first UPR recommendations from Canada, Norway, Finland, Germany and France that Viet Nam end restrictions on the rights to freedom of expression and peaceful assembly.<sup>55</sup>

## Right to Work

In 2015, a nationwide campaign was launched to campaign for LGBTIQ equality in the workplace. This campaign was jointly organised by Viet Pride Hanoi and the Information, Connection and Sharing Centre (an LGBT organisation in Viet Nam commonly known as ICS) and is entitled "Work with Pride."<sup>56</sup> The American Embassy in Hanoi launched the campaign by facilitating a dialogue between LGBTIQ activists and the corporate community in order to

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<sup>50</sup> "Ambassadors address social change in YouthSpeak campaign", *Việt Nam News*, 10 July 2016, available at <http://vietnamnews.vn/sunday/299157/ambassadors-address-social-change-in-youthspeak-campaign.html#gXGxBOtfvsEEBWWz.g7> (last visited 11 July 2017).

<sup>51</sup> "Youths in big cities join dance to support homosexuals", *Tuoi Tre News*, 24 September 2012, available at <http://tuoitrenews.vn/lifestyle/1793/youths-in-big-cities-join-dance-to-support-homosexuals> (last visited 9 July 2017).

<sup>52</sup> "Human Library Aims To Create Understanding", *Việt Nam News*, 28 August 2016, available at <http://vietnamnews.vn/sunday/features/301581/human-library-aims-to-create-understanding.html#5jKTvt07WMq3mYTC.g9> (last visited 11 July 2017).

<sup>53</sup> "Queer Forever 2016 gives LGBT films a voice", *Viet Nam News*, 15 September 2016, available at <http://vietnamnews.vn/life-style/342811/queer-forever-2016-gives-lgbt-films-a-voice.html#ufw3rZpWscEytAh1.g9> (last visited 11 July 2017).

<sup>54</sup> Anh Vu & Khanh An, "Vietnam recognizes transgender rights in breakthrough vote", *Thanh Nien News*, 24 November 2015.

<sup>55</sup> First UPR cycle: *Report of the Working Group*, Viet Nam, paras. 35, 41, 63, 65, 85, 102.

<sup>56</sup> "Campaign for LGBT rights in the workplace launched", *Việt Nam News*, 15 October 2015, available at <http://Viet.Namnews.vn/society/277131/campaign-for-lgbt-rights-in-the-workplace-launched.html> (last visited 11 July 2017).

raise awareness about being LGBTIQ in the workplace, and how the corporate community can become engaged in the LGBTIQ movement.<sup>57</sup>

The campaign was heralded as a success. The fact that Viet Nam has enabled it to be freely staged demonstrates the multifaceted progress it is making on LGBTIQ rights. This campaign speaks to not only the right to equality and non-discrimination but also to the universal right to work and to just and favourable conditions of work and protection against unemployment. Its success goes towards fulfilling the recommendation that Viet Nam accepted during its second UPR to ensure the realisation of socio economic rights and generally, the rights of vulnerable groups.<sup>58</sup>

## Conclusion

Since its first UPR, Viet Nam has accepted a broad range of UPR recommendations affecting its LGBTIQ community and HRDs working on LGBTIQ-related issues. These include recommendations aimed at combating discrimination on the basis of sexual orientation or gender identity; supporting greater freedom of opinion, expression, assembly; and encouraging the attainment of international human rights standards generally.

In practice, Viet Nam's legalisation of sex reassignment and simplification of name and gender identity changes serve as a watershed both for its transgender community and the broader Southeast Asian region, where this law is the first of its kind. In addition, the Vietnamese government's non-interference in a wide range of LGBTIQ events held or in a "Work with Pride" campaign encouraging equality in the workplace demonstrates that the LGBTIQ community may not only enjoy strengthened fundamental freedoms but also greater possibilities to obtain employment and to enjoy more favourable working conditions and protections.

The promising developments in Viet Nam in practice during the period of its first two UPR cycles represent an opportunity to build on these permissive practices by formalising them as legal reforms to remove restrictions on the exercise of fundamental freedoms. This is important because while HRDs working on LGBTIQ issues appear not to have been unduly hindered in their work, this is not the case for the wider community of HRDs in Viet Nam, and the existence of restrictions on fundamental freedoms continues to expose LGBTIQ HRDs and the LGBTIQ community to potential risk.<sup>59</sup>

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<sup>57</sup> "Campaign for LGBT rights in the workplace launched", *Việt Nam News*, 15 October 2015.

<sup>58</sup> Jörg Wischermann, "LGBT Rights Are Not Politically Sensitive in Vietnam", GIGA, 29 January 2015, available at <https://www.giga-hamburg.de/en/news/%E2%80%99Clgbt-rights-are-politically-not-sensitive-in-vietnam%E2%80%9D> (last visited 11 July 2017); Second UPR cycle: *Report of the Working Group*, Viet Nam, paras. 143.47-143.49, 143.54, 143.56, 143.79, 143.124, 143.187, 143.194, 143.223.

<sup>59</sup> Bennett Murray, "Vietnam's Quiet Human Rights Crisis", *The Diplomat*, 17 April 2017, available at <http://the-diplomat.com/2017/04/vietnams-quiet-human-rights-crisis/> (last visited 11 July 2017).

## Recommendations

In the lead-up to the third UPR review of Viet Nam in January/February 2019:

- CSOs should actively engage in monitoring the implementation of those recommendations Viet Nam accepted and/or noted during the first two UPR cycles so as to gather relevant data on the improvement of the human rights situation in the country and to report at the third UPR cycle.
- CSOs should document violations and abuses endured by LGBTIQ people and their defenders so as to provide recommending states and the relevant United Nations mechanisms with solid evidence-based information.
- CSOs and recommending states should work collaboratively to develop UPR recommendations for the third cycle that emphasise the benefit to Viet Nam of removing unnecessary limitations to, and strengthening the protection of, fundamental freedoms.

# Viet Nam: LGBTIQ HRD Interview

Human Rights of LGBTIQ  
Communities and HRDs:  
Frontline Voices



**Khoa (Teddy) Nguyen,  
Community Leader**

## **How did you become involved in LGBTIQ rights work?**

I became involved in LGBTIQ work in 2009. At the time I worked for an online gay forum in Viet Nam, because at the time the LGBT people were discriminated against a lot, and while working at the forum I learned about the ICS Center [Information, Connection and Sharing Center].

ICS was established in 2008 and they work on LGBT rights — the first LGBT organisation in Viet Nam — and I had the chance to work with them. After that in 2011 I worked at the ICS Center as a contributor, so while working at the ICS Center I had the chance to work

with the CSO world and I worked on many projects on LGBT rights.

## **Do you consider yourself a human rights defender?**

Yes, I have been working for LGBT rights and other human rights since many years ago.

## **What work are you doing right now?**

I am a university lecturer. I do not teach about LGBT rights at my university, but I am a volunteer for some CSOs such as the ICS Center. So in my free time I work as a contributor for ICS Center as well as for PFLAG [Parents and Friends of Lesbians and Gays] Viet Nam. My Mum is the President of PFLAG Viet Nam.

## **What do you think has been the most important things you've done for LGBT rights?**

Actually, I have many stories when working on LGBTI rights. The interesting outcome we have made is we worked with the government and we asked them to remove laws which do not permit same-sex couples to have marriage. And we lobbied the government to change the laws to recognise transgender people. That was the most interesting outcome.

To be more precise, same-sex couples can now have a wedding, but their marriage will not be recognised by the government.

Before the laws changed, if gay people hosted a wedding they could be fined. The government could come and give gay people a fine and stop the wedding at any time. After the advocacy on LGBT rights in Viet Nam, the government issued the new laws and accepted gay weddings, though not recognising their marriage.

### **What was your involvement in the law changing?**

I and my co-workers and PFLAG Viet Nam had to go to Hanoi to have workshops with government officers and Congress members and with the Ministry of Justice to give them the ideas and to tell them the story in which the LGBT community faces many problems in their lives.

We were very surprised with the result, because our government always sees human rights as a sensitive topic, but on the topic of LGBT rights they are very open-minded. And the law changed rapidly, because before 2009, 'LGBT' was an unknown word in society. And they only think that gay and lesbian people have some kind of sickness.

### **Have you ever felt personally at risk because of your work?**

Actually no, I don't feel any risk at all because in Ho Chi Minh people are very open-minded. Being gay or not or being hetero isn't your life, and people don't care about it, so I don't feel risk about anything — even in my work. LGBT people in some other provinces, they face many problems and face stigma and discrimination. In the

country, even in some big cities like Hanoi, people often see LGBT people as weird.

### **What role does religion play in the pursuit of LGBTIQ rights?**

We do not have a main official religion, so religion plays a small role in intervening with the laws. But in the small areas, especially in some areas with the Christian church, they always say that LGBT people are a sin. Luckily most of Vietnamese people are Buddhist. Some Christians are open-minded to this issue too, only the Protestants are very strict to the LGBT issue.

### **Does your government do enough to protect LGBTIQ rights?**

Yes, they do many things to protect LGBT rights, especially in this day, and they hold many workshops to make the laws. Currently, they are making some laws to allow the transgender people to have surgery, to change their sexual status. And the Ministry of Education are hosting many workshops to put the knowledge of sexuality into the books for students. The government needs to push in order to bring equal rights to every people as soon as possible.

### **Do you think the UPR recommendations have an impact on Viet Nam? Do you think the recommendations lead governments to change policies to strengthen human rights protections?**

Yes. The UPR has a big impact on my country because in the first round of the UPR, Viet Nam kept its vote and disagreed with the recommendations. But on the two other rounds, they said yes to the UPR and its recommendations. When they agree with

the UPR, they change the laws and they want to bring equality for the LGBT people.

**Does civil society know how to use the UPR recommendations and comments for advocacy in Viet Nam?**

Yes, civil society uses the UPRs in their work with the government.

**Is there much cooperation between civil society organisations in the pursuit of LGBTIQ rights?**

PFLAG Viet Nam was established in 2011 and it has helped a lot in our movement. When PFLAG met with government officers and Congress members, they tell the government officers about their stories. Their stories are very touching, so it makes the government officers realise what problems their families are facing.

In our oriental culture, in Viet Nam, family is one of the most important factors. And when the parents, and especially the mothers, speak up about their lives, it makes the government understand the difficulties the LGBT people are facing every day. So it helps a lot with the movement. PFLAG is one of the most important factors for the movement.

The media has also had one of the biggest impacts on the movement. Before 2009, the media had many articles saying bad things about LGBT people. They described LGBT people as criminals and this made society think LGBT people are criminals. But after the ICS Center was established, the first project of the ICS Center was to work with the media and to give the media the exact information about the LGBT people and let the journalists have contact directly with LGBT people.

**What gives you hope when looking to the future of LGBTIQ rights in Viet Nam?**

I have been working for LGBTI rights in Viet Nam since 2009, and I have seen a rapid change in our society. In the past, LGBT people faced many problems and they faced stigma and discrimination, and they cannot tell anyone about their sexuality. But after our work from 2009 until now, things changed rapidly – there are more and more people being confident in their lives and they freely tell anyone about their sexuality without having fear or being afraid of discrimination and stigma. Society welcomes and encourages people to talk about their sexuality.

## Southeast Asian Region: LGBTIQ HRD Interview

Human Rights of LGBTIQ  
Communities and HRDs:  
Frontline Voices



**Ryan Silverio,**  
**Regional Coordinator,**  
**ASEAN SOGIE Caucus**

### **How did you become involved in LGBTIQ rights work?**

It all started with an academic exercise. I was in my senior year at university and it was thesis time and I clearly remember it because I had a professor who was a trans feminist activist. So, in my international relations course, I was initially thinking about doing a research on the use of rape as a weapon of war in the context of Burma, but then she said “why don't you do something about gay and lesbian rights?” And then she said “I think there is something brewing in the Philippines and why don't you do a study

about it?” It was a challenging moment at the time because very little literature had been written on gay and lesbian rights. Certain points of view and creative ideas, and then some newspaper and magazine articles; the people, the drivers of the movement were not so visible. So I was only able to get in touch with them through friends because someone had a contract with this activist, and that activist referred me to another activist. While doing that research I gradually became involved more as an onlooker, and then eventually became a participant as a volunteer, and then years and years after that, even after I finished my research, I became quite active in many LGBT events.

I think one organisation that was very instrumental was Amnesty International. Amnesty International has a country office here [in the Philippines], I was one of their members and became the chair of their youth network, because of that, I had a good opportunity to be part of the larger LGBT community in the Philippines called Task Force Pride, which organised the pride march. Task Force Pride no longer exists, but it transformed into Metro Manila Pride.

These spaces enabled me to position myself actively within the community. My work with ASEAN SOGIE Caucus (**ASC**) started in November 2014. My participation with ASEAN SOGIE Caucus is the first time that I am working for an LGBT organisation in a paid capacity. My previous work was about



volunteering and trying to include or integrate LGBT issues into what I am doing.

**What have been the biggest challenges you've faced in advocating for LGBTIQ rights in the ASEAN context?**

I think there's this paradox — there's a need to be visible as a movement, you need to have visibility and there's a demand from the media, funders, and the community, while at the same time, there's also this push to make things more secure. For example, we encountered one activist who really wants to be out in the open, but the problem is that with the mandate of ASC, we have to give security, and we have to influence that activist to be a little bit behind, not to be bold and proactive with his activism, because at the end of the day he might receive repercussions in his own country, and I'm particularly referring to an activist we met in Brunei. There are these two conflicting ideas — you need to be visible but at the same time you need to be cautious about security.

Another thing is that we noticed there is a lot of money in LGBT rights, which may not necessarily be too much in comparison with other social issues, but in terms of capacities of LGBT organisations, I think there is some weakness there. Only very few LGBT groups have legal registration status in their countries. Some exist in an informal capacity with no clear governance procedures or not so strong in terms of programme management. On top, you have a lot of money being given, but in terms of absorption and managing the money, there are certain weaknesses.

Another thing which is very important is the shrinking civil society space. I recently came from Indonesia and I had a good chance to meet our members there. The problem with Indonesia is that the attacks against LGBT people have shifted. Before it was done in the public space. LGBT groups organising events or offices would be attacked. This time around, even the private spaces of LGBT people are being targeted. For example, a recent case, when extremist groups together with the police attacked one condominium unit, allegedly because there was a sex orgy going on in that unit, and then gay men were arrested. Their phones were confiscated, including private information, including photos and their profile pictures were scattered around social media like Twitter and Facebook.

Indonesia does not have, for example, a law that criminalises LGBT people, except in the province of Aceh where they have the *sharia* code. But now, there's some move towards criminalisation and a lot of activists are already experiencing the crunch. When I spoke with my colleagues there, the key point that they need to do is to consolidate forces within the LGBT ranks and together with the larger pro-democracy movement. They are already sensing that the LGBT issue is a complication of several factors, including the persistent homophobia and transphobia brought about by culture and religion, and at the same time, the need to galvanise conservative forces to seize political power. And now the activists are already seeing the unholy alliance between the military and religious extremist organisations.

## **How have things changed over the past few years regarding LGBTIQ rights and being a LGBTIQ human rights defender in Southeast Asia?**

There's a good civil society space that recognises our issues as legitimate human rights issues. I'm specifically discussing the ASEAN civil society conference 'ASEAN People's Forum' (**ACSC/APF**). The last annual gathering took place in Timor-Leste. In the working guidelines of the ACSC/APF, the principles of non-discrimination, inclusivity and diversity were included.

There was an instance when a group of Laos GONGOS [government owned and controlled NGOs] tried to seize the agenda. That was March 2015, in one preparatory meeting in Kuala Lumpur, Malaysia. One Laos leader said "oh, Laos will host the ACSC/APF in 2016." This Laos leader said 'we don't think LGBT issues should be discussed in ASEAN because there's no ASEAN consensus on this matter and you have to understand many countries in our region are not comfortable dealing with this issue.'

The second time they raised this discussion was during a conference in Kuala Lumpur, Malaysia, related to the ACSC/APF where I spoke on a panel on human rights defenders. There was a Laotian diplomat saying "why are we talking about LGBT issues here? ASEAN should be all about economics and trade. There's no point talking about LGBT rights." The nice thing is that in those instances when the Laos folks raised the matter, we can see fellow human rights activists or civil society leaders who would ally with us. A lot of the activists from

women's movement or mainstream human rights groups or mainstream democratisation groups have said "no, we will not accept those restrictions imposed by you. We need to uphold and affirm that ACSC/APF is an open space for everybody, for all civil society groups, and that includes LGBT activists." We can see in the region, now, amongst the civil society, there is a growing awareness and recognition of LGBT activists as part of the democratisation in human rights building in the region.

I can also see now that over the past few years, LGBT groups have increasingly been using human rights mechanisms. For example, at the domestic level in the Philippines, it was only in 2015 when the Philippines Commission on Human Rights appointed one commissioner to specifically focus on LGBT rights. The Commission on Human Rights also came up with a policy expanding the mandate of the women and gender equality desk to include LGBT rights. Domestically I've seen that LGBT groups have been submitting communications to them.

The same thing at the global level with the UPR. In 2012, there was a submission made by three LGBT groups in the Philippines, and after the submission nothing happened. Not much in terms of lobbying. This time around we can see a lot of groups submitting reports and, at the same time, we are now coordinating in terms of how are we going to lobby for UPR recommendations.

## **What are the difficulties facing ASEAN SOGIE Caucus at the moment?**

A challenge we're facing are the domestic realities where the civil society space is shrinking. Also the online security stuff, because a lot of us are now communicating online. So there's a lot of pressure and stress and it comes to checking our platforms, and ensuring communication platforms safe enough. And then I think different people have different appreciations of security. Again, it boils down to the secretariat of ASC to make things well, including all the security preparations. Now we're using encrypted messaging platforms. There's a platform, and then someone says "oh by the way that's not really safe, there's another safe platform to consider." Technology shifts, so a lot of things change.

Data: that's another thing that we lack. The thing is, we tried to do a project on human rights documentation and we faced this reality. When you do human rights documentation, you make sure that the methodology is easy and accessible and understandable to the grassroots, rather than being so concerned about methodology that would require a lot of rigour but may alienate grassroots who have the data. What we did in Cambodia, because the group in Cambodia really wanted to do human rights documentation, was to work with them on a methodology that is quite comprehensive because they really wanted to learn the tricks and skills of how to do interviews, how to write a narrative, how to do transcriptions, etc. So we did the training with them, but apparently the community that we engaged got overwhelmed with the research process and we're now facing a

problem in the sense of producing a report because transcripts were not produced and a lot of people gave up on the research project because they felt that it was such a huge responsibility for them.

So we thought, ASC together with other human rights groups, we need to think of a way on a methodology that is easy. What kind of information do we really need when we produce a communication to, say, the special rapporteur, or produce a report for the UPR or treaty body – do we really need to have in depth research with all the necessary evidence and witnesses, just like when we file a case in court? There's a difference between the two. This is something that we're still discussing and we're trying to innovate, because data is so important but we want the community to have a stake in producing the data.

## **What challenges are facing the Southeast Asian region for LGBTIQ human rights defenders?**

One challenge we're facing in the region is that we don't have a mechanism where LGBT people can easily ask for protection. What we noticed is that the national human rights institutions (**NHRIs**) can provide instant relief if there's an NHRI in their country. But you've got a lot of countries that don't have NHRIs – who will these LGBT activists seek recourse from? There are international groups who can provide legal assistance or funding for LGBTs in distress, but other than that nothing much. So I think as a regional group, we need to pool some resources and some funds. For example, one activist from, say Brunei, needs relocation – instead of referring the activist to a United States-

based or Europe-based organisation — can we work together to help that person?

Another thing, every time relocation is discussed, what I notice is that people tend to see the West as destinations for asylum, and we haven't seen some countries within the region who can be their destination. People will always say Thailand, because I know of some LGBT activists who went to Thailand as the initial point, but Thailand is not a party to the Refugee Convention. So what's going to be the status of the person there? Yes you've got LGBT groups and human rights groups who can shelter, provide all necessary resources, but what's the legal status of the person in Thailand? So I think we need to also seriously think about asylum. This is so necessary because the shrinking spaces in many countries like Indonesia, where activists are saying 'we need to find ways to seek asylum, we don't know the situation in the coming months'. The thing is, we need to develop an accessible regional mechanism to provide protection for LGBT human rights defenders at risk.

**Does ASEAN SOGIE Caucus engage with the ASEAN Intergovernmental Commission on Human Rights (AICHR)?**

I think we have to ask again, will AICHR have protection mechanisms on human rights in general? Because if you read closely on the terms of reference, it is so structurally flawed on various grounds. As a Commission, they don't have communications mechanisms and many groups have already asked AICHR how many complaints they received from civil society. AICHR said they don't have statistics

because their mandate is constrained not to take into consideration such things. So they don't have a communications procedure, they don't have a monitoring and reporting mechanism.

The good thing with AICHR now is that they have individual members who are supporting the LGBT issue. For example, Malaysia was a complete turnaround — the previous Malaysian Commissioner was very conservative and challenged the court's decision on the transgender case in Malaysia, but now the new Commissioner supports LGBT rights. Malaysia is an example of that maybe in the future we can have pro-LGBT commissioners on board — who knows. It can be an advancement but it can also be a regression, it really depends on domestic realities. To be honest, I'm not too optimistic of AICHR having protection mechanisms for LGBT rights, much more protection mechanisms at the regional level.

**Do you see any trends throughout Southeast Asia regarding the situation of LGBTIQ human rights defenders?**

Let me share an example concerning the Philippines — this is not directly on LGBT rights. As an LGBT person I can still say 'by the way I can talk about this without fear of reprisal', but framing my issue as a human rights issue puts me in jeopardy because of the government's view on human rights and of the wider community's view of human rights as anti-government and anti-Duterte. That's where the problem lies. Even amongst us within the LGBT community here in the Philippines we are trying to reconsider — are we going to be mild about the way we use human rights as a

framework? Can we use 'social justice' more than 'human rights' as we might be branded as anti-Duterte? And knowing there are pro-Duterte LGBT activists within our midst. So that's something that we are trying to address. Repression, shrinking political space.

**Do you think the UPR recommendations have an impact on Southeast Asian countries?**

It actually really depends; in terms of using the UPR recommendations to galvanise activism, I think that's where the impact lies. In terms of how the UPR recommendations influence government policy and actions, it creates some spaces for conversation. But in terms of actual change, I think there are many factors to consider. In general I don't think the UPR recommendations really create an impact when it comes to policy or programmatic change. Indirectly, it creates or it softens the ground to make it fertile for activists and government engagement.

For example, the case of Singapore, during the UPR, ASEAN SOGIE Caucus and many other groups came up with a joint submission. During the lobbying part, our member from the organisation Sayoni, engaged with other groups focusing on migrant workers, against the death penalty to join a lobby for recommendations. They got recommendations but the Singaporean government noted all of those LGBT related recommendations. They used the recommendations in order to talk to Singaporean government and other human rights organisations to continuously remind them that other governments are looking at us — there's already pressure. Meanwhile,

there's also domestic pressure. How can you work together? I mean, if you cannot decriminalise homosexuality and transgenderism in this country, what can we do in order to have some more concrete ways to protect LGBT people? It's more like that — using the recommendations as an entry point to have discussions with Governments.

**What role does ASEAN SOGIE Caucus play regarding the UPR process?**

It depends on a country-per-country basis. The way we work is that, we have to make sure that the local LGBT organisations have the primary leadership role, unless we are being asked to take the primary lead role. In Singapore there is a strong LGBT organisation there, so what ASC did was we provided resources to them, we reviewed and provided some analysis on the report, we helped the local group craft the recommendation.

We also did this initiative whereby activists from other countries would lobby their foreign ministry to come up with a recommendation related to LGBT rights. For example, when Singapore was under review, we lobbied the Philippines Government to issue a UPR recommendation for Singapore. It's a big shot, we already foresaw the Philippines would not do it, but we want to show a sense of solidarity towards our fellow ASEAN activists — we do it South-South collaboration.

Now we're taking the lead for the Philippines as this is our home base. The local groups are quite busy with domestic work, like there are two bills, the SOGIE specific anti-

discrimination bill, the comprehensive anti-discrimination bill, and a lot of engagements with the executive agencies. So nobody really wants to focus on international activism. So they said, ASC, please take the lead and we will help you.

**What gives you hope when looking to the future of LGBTIQ rights in Southeast Asia?**

A lot of activists now are so hot over all the mechanisms. With a new independent expert mandate which we recently defended in the General Assembly — a lot of people are excited to direct their attention to UN mechanisms. Initially we were so excited about the regional mechanism in ASEAN up until a few years ago, when we realised we were talking to a brick wall. People are looking to the formal mechanisms but the

reality is this: despite all these developments globally, it's so difficult to have effects on the ground. For example, we have the hype to have Professor Vitit [Muntarbhorn], but then again Professor Vitit's mandate will only be successful if there is 1) support from governments, and 2) a strong local movement building. This made me realise, and this gives us hope, because nowadays LGBT groups from many countries are taking movement building seriously, rather than patches of activism here and there. There are moves to consolidate forces, not only within the LGBT community, but also with the wider social justice movements. So that gives us hope because at the end of the day, when all these mechanisms falter, when domestic mechanisms falter, you've got the local movement who will provide protection on LGBT rights.

# Concluding Recommendations

Destination Justice's concluding recommendations stem from two basic considerations:

- A better and more informed use of the UPR process could have a real positive impact on the situation of the LGBTIQ communities and their HRDs in Southeast Asia.
- Though Southeast Asian countries and the LGBTIQ communities living and operating within these countries are extremely diverse, Destination Justice is convinced that to achieve recognition, equality and non-discrimination, both the Southeast Asian governments and the LGBTIQ communities should work together and in complementarity at the local, national, regional and international levels.

The following recommendations specifically address Southeast Asian governments, recommending States during the next — third/fourth — UPR cycle and the LGBTIQ communities and their HRDs.

## Recommendations to Southeast Asian Governments

- Adopt a holistic approach to ending discrimination towards the LGBTIQ community, starting with ending the criminalisation of human rights defenders.
- Accept and implement at the best of their capacities, and before the next UPR review, all recommendations made on SOGIESC issues.
- Ensure an effective follow-up of the recommendations accepted during the UPR review, starting with submitting their follow-up report.
- Encourage fellow Southeast Asian States to strengthen human rights protection for their LGBTIQ communities and HRDs, and foster greater State-to-State and regional cooperation and collaboration in this regard.

## Recommendations to Recommending States (During the UPR process)

- Work together with local LGBTIQ communities and HRDs to better understand their needs, the challenges they face, and the violations they endure and how it should be addressed during the UPR process.
- Foster and advocate for the inclusion of specific, measurable, achievable, realistic, timely (**SMART**) recommendations on SOGIESC into the working group final outcome report of every Southeast Asian State.

- Keep the States to which they made recommendations accountable, and more specifically follow-up regularly on the recommendations and seek cooperation from other States.

## **Recommendations to Civil Society & HRDs**

- Work together between local, national, and international CSOs as well as the government to submit the most accurate possible information and SMART recommendations.
- Foster advocacy based on the recommendations made during the UPR, and use the UPR as an accountability tool regarding governments.
- Strengthen networking among CSOs and HRDs locally, nationally, and regionally to foster knowledge sharing and best practices in working with governments to address SOGIESC-based discriminations and to encourage policy change.
- For LGBTIQ communities at the local and national levels, collaborate with the competent authorities to foster legal and policy change, and to expand support for LGBTIQ, education and reporting stories.
- Work at all levels, including internationally and regionally, by using the UN and ASEAN mechanisms.



## Annex 1: Southeast Asian States' Ratification of Relevant Human Rights Instruments

Country	ICCPR	OP-ICCPR	OP2-ICCPR	ICESCR	OP-ICESCR	CEDAW	OP-CEDAW	CAT
<b>Brunei</b>	No	No	No	No	No	2006	No	2015 (s)
<b>Cambodia</b>	1992	2004 (s)	No	1992	No	1992	2010	1992
<b>Indonesia</b>	2006	No	No	2006	No	1984	2000 (s)	1998
<b>Laos</b>	2009	No	No	2007	No	1981	No	2012
<b>Malaysia</b>	No	No	No	No	No	1995	No	No
<b>Myanmar</b>	No	No	No	2015 (s)	No	1997	No	No
<b>Philippines</b>	1986	1989	2007	1974	No	1981	2001	1986
<b>Singapore</b>	No	No	No	No	No	1995	No	No
<b>Thailand</b>	1996	No	No	1999	No	1985	2000	2007
<b>Timor-Leste</b>	2003	No	2003	2003	2010 (s)	2003	2003	2003
<b>Viet Nam</b>	1982	No	No	1982	No	1982	No	2015

Source: Status of ratification, <http://indicators.ohchr.org/> (9/9/2016)

(s) signed only, no ratification

## Annex 2: Southeast Asian States' Votes Regarding Establishing a UN Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity

Country	Vote (Yes/No/Abstain)
Brunei	No
Cambodia	Yes
Indonesia	No
Laos	<i>Did not vote</i>
Malaysia	No
Myanmar	Abstain
Philippines	Abstain
Singapore	No
Thailand	Yes
Timor-Leste	Yes
Viet Nam	Yes

Source: [http://www.gaynz.com/articles/uploads/4/SOGL\\_vote.jpg](http://www.gaynz.com/articles/uploads/4/SOGL_vote.jpg)

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**Revealing the Rainbow: The Human Rights Situation of Southeast Asia's LGBTIQ Communities and Their Defenders** analyses the human rights situation of Southeast Asia's LGBTIQ communities and their defenders in Southeast Asia in the decade since the Universal Periodic Review (UPR) and the Yogyakarta Principles were introduced. It documents both the legal framework and analyses the factual reality in each of the 11 Southeast Asian States (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Timor-Leste, and Viet Nam) on the basis of relevant UPR recommendations they accepted. This Report aims to foster dialogue to improve the human rights situation of Southeast Asia's LGBTIQ communities and their defenders. In particular, it hopes to empower civil society organisations (CSOs) and UN Member States to fully capitalise on the UPR process as a means through which such improvements may be achieved.

Revealing the Rainbow is published as part of Destination Justice's **Rainbow Justice Project**. Through this project, Destination Justice aims to foster dialogue in Southeast Asia on sexual orientation, gender identity and gender expression, and sexual characteristics (SOGIESC), and to provide advocacy tools to changemakers for the promotion and protection of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community's rights.



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