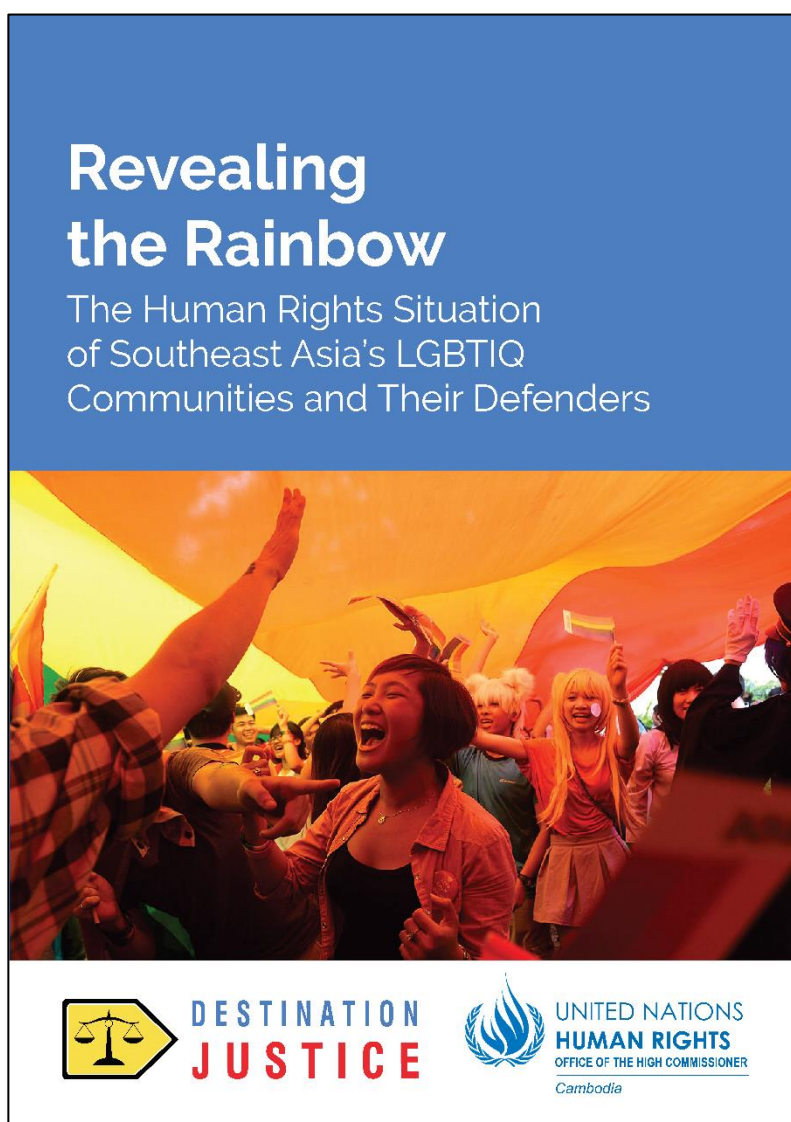


# LGBTIQ Communities and Their Defenders Country Information Pack: **Cambodia**

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# 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 have 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

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<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.

# 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.

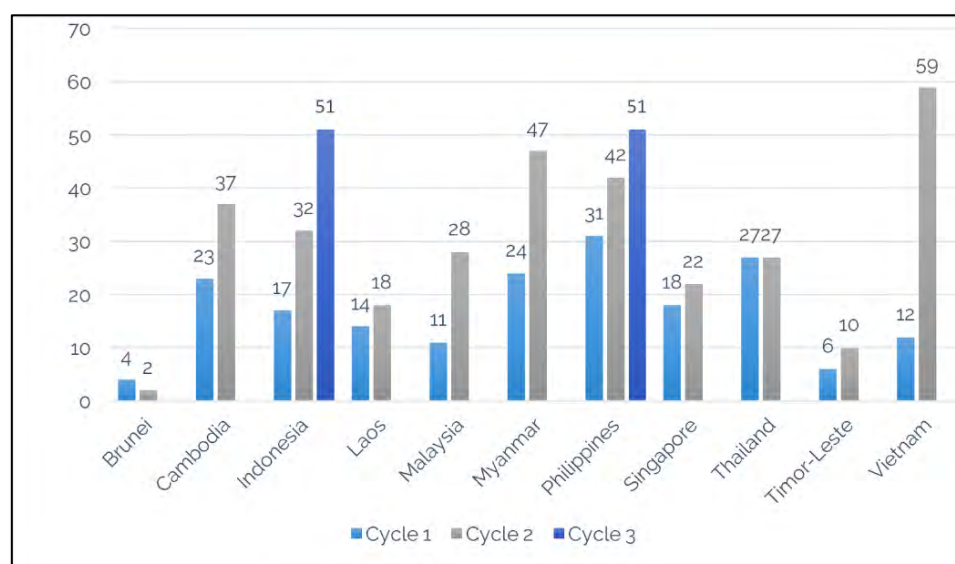
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<sup>4</sup> "Sexual Orientation, Gender Identity and Expression, and Sex Characteristics at the Universal Periodic Review", ARC International, IBAHRI & ILGA, November 2016, p. 100, available at [http://ilga.org/downloads/SOGIESC\\_at\\_UPR\\_report.pdf](http://ilga.org/downloads/SOGIESC_at_UPR_report.pdf) (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%2f8hyEn2VHMCAZQ%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:

Everyone 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 "Everyone 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=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdlmnsJZZVQfUKxXVisd7Dae%2FCu%2B13J25Nha7lgNlwYZ%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:

<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.

# 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.

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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.

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