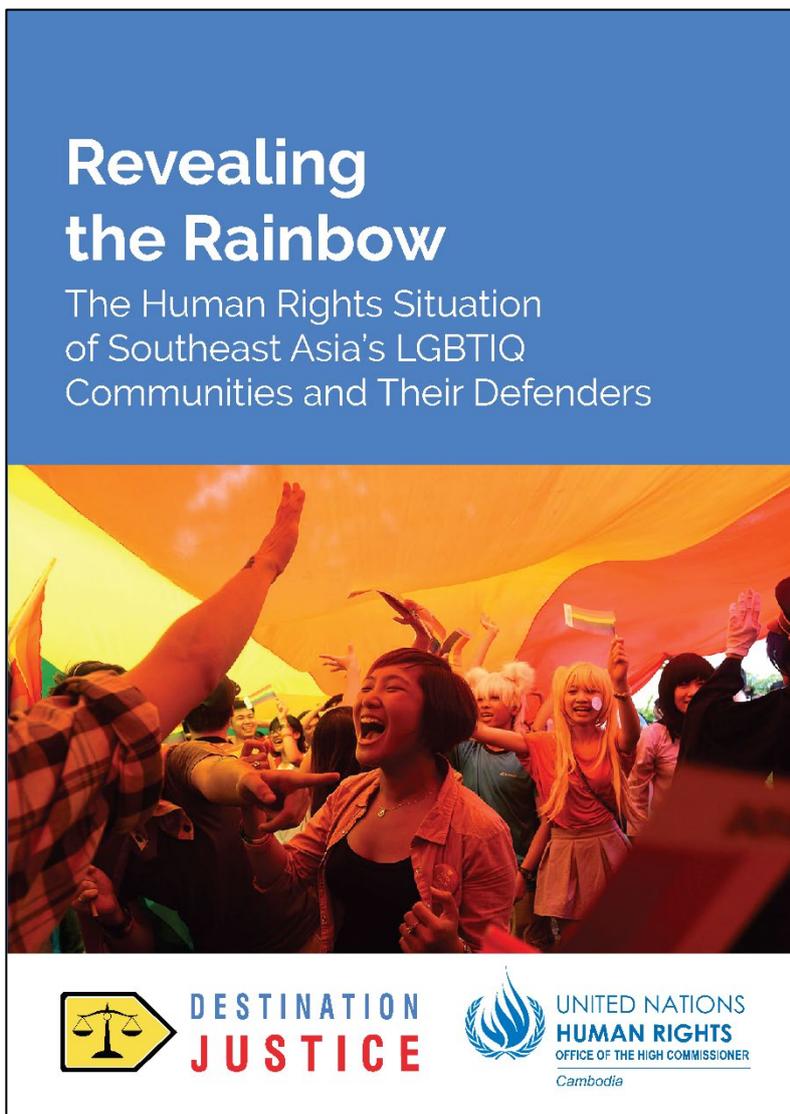


LGBTIQ Communities and Their Defenders  
Country Information Pack:  
**Indonesia**

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# Indonesia: Country Profile

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

### Introduction

#### UPR Cycles

**First UPR Cycle:** 9 April 2008

**Second UPR Cycle:** 23 May 2012

**Third UPR Cycle:** 3 May 2017

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

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

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

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

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

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

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

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

## Past UPR Cycles for Indonesia

### First UPR Cycle (9 April 2008)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Second UPR Cycle (23 May 2012)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Third UPR Cycle (3 May 2017)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Prohibition of Torture

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

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

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

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

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

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

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

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

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

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

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

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

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

## Right to Equality and Non-Discrimination

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Freedom of Association and Assembly

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>106</sup> "The ASC calls for immediate investigation of the violent attacks at the Transgender Day of Remembrance Event in Yogyakarta, Indonesia", ASEAN SOGIE Caucus, 28 December 2014, available at <http://www.aseansogiecaucus.org/statements/asc-statements/26-the-asc-calls-for-immediate-investigation-of-the-violent-attacks-at-the-transgender-day-of-remembrance-event-in-yogyakarta-indonesia?highlight=WyJ5b2d5YWthcnRhll0=> (last visited 21 November 2016).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Right to Privacy

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

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

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

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

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

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

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

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

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

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

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

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

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

## Freedom of Expression

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Conclusion

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

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

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

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

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

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

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

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

## Recommendations

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

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

## Indonesia: LGBTIQ HRD Interview

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# 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.

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<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.

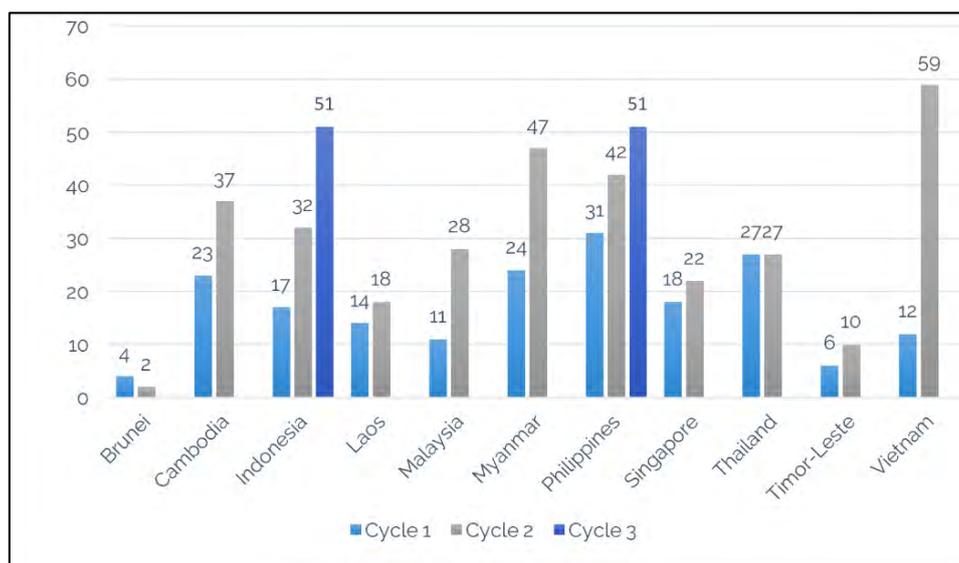
As outlined in this Report, regional progress in this regard has been notably inconsistent. Some Southeast Asian States have indeed acted on accepted UPR recommendations. This Report describes multiple instances of States taking significant steps towards reforming their legal framework to include express 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/Files\\_Handler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsncLNPIYsTOQN5Sbrs%2f8hyEn2VHMCAZQ%2fCyDY96cYPxM8cQ8bbavViNnuV6YU3gyHlmioCM17RLf4esahJ5a1%2bxQTspR9eqkzThSr5nhgfhp](http://docstore.ohchr.org/SelfServices/Files_Handler.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#.Wh4t4XUqWZPZ> (last visited 27 November 2017); ICJ, “Serious setback: Singapore breaks moratorium on death penalty”, 18 July 2014, available at <https://www.icj.org/serious-setback-singapore-breaks-moratorium-on-death-penalty/> (last visited 27 November 2017).

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

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

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

## Prohibition of Torture

### Legal Foundation

**UDHR:** Article 5

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

**CAT:** Article 2 and generally

**Yogyakarta Principles:** Principle 10

**AHRD:** Article 14

**DHRD:** Article 12(2)

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

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

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

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

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

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

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

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

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

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

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

## Right to Privacy

### Legal Foundation

**UDHR:** Article 12

**ICCPR:** Article 17

**Yogyakarta Principles:** Principle 6

**AHRD:** Article 12

**DHRD:** Article 12(2)

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

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

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

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

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

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

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

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

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

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

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

## Right to Work

### Legal Foundation

**UDHR:** Article 23

**ICESCR:** Article 6

**CEDAW:** Article 11

**Yogyakarta Principles:** Principle 12

**AHRD:** Article 27

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

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

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

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

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

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

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

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

## Freedom of Opinion and Expression

### Legal Foundation

**UDHR:** Article 19

**ICCPR:** Article 19

**Yogyakarta Principles:** Principle 20

**AHRD:** Article 24

**DHRD:** Articles 6 and 7

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

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

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

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

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

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

<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%2FC%2F21%2FRev.1%2FAdd.7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%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.

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

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