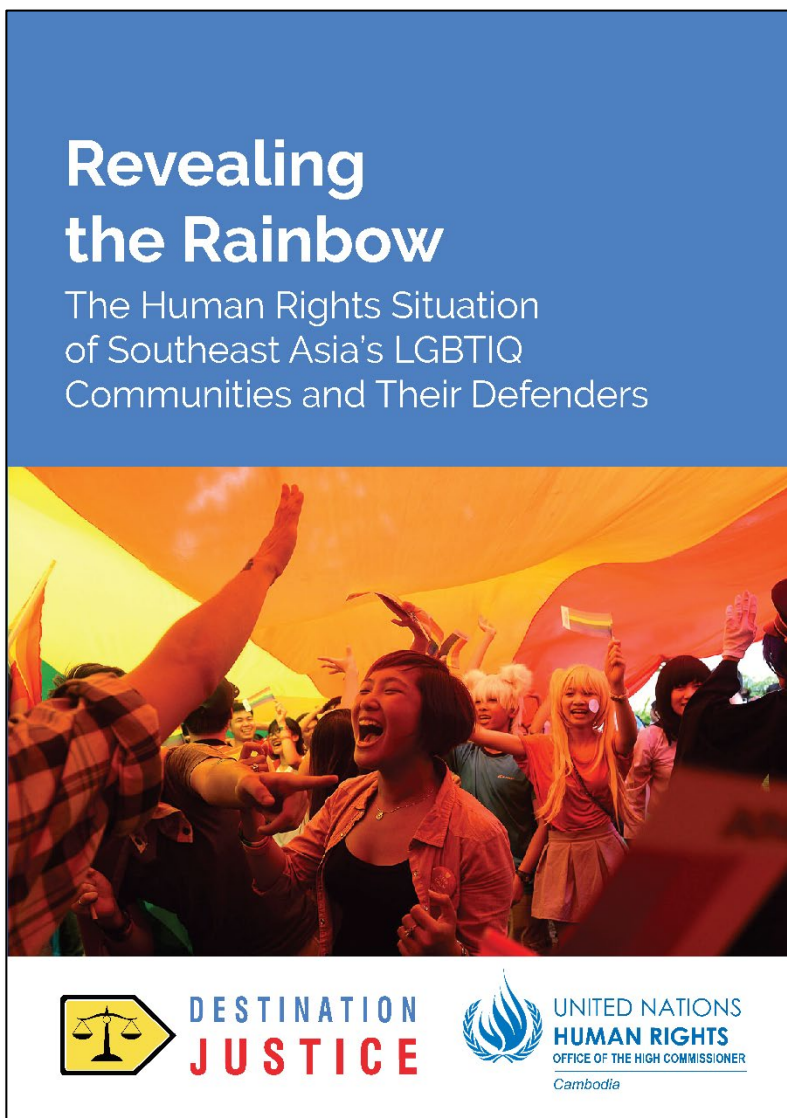


LGBTIQ Communities and Their Defenders
Country Information Pack:

Laos

Selected Extracts From



Revealing the Rainbow (2018) is available in full at:
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Laos: Country Profile

Human Rights of LGBTIQ Communities and HRDs: Situational Analysis

Introduction

UPR Cycles

First UPR Cycle: 4 May 2010

Second UPR Cycle: 20 January 2015

Third UPR Cycle: January/February 2020

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

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

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

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

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

Anonymous LGBTIQ HRD

Past UPR Cycles for Laos

First UPR Cycle (4 May 2010)

National Report Filed:¹ Laos' national report for the first UPR was published on 22 February

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

2010. It mentioned neither the LGBTIQ community nor HRDs. The report did, however, describe how Laos had enacted approximately 90 laws aimed at promoting and protecting human rights, including the freedom of the press² and freedom of expression.³

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

First UPR Cycle for Laos: Recommendations Received

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

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

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

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

³ First UPR cycle: *National Report*, Laos, para. 45.

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

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

⁶ First UPR cycle: *Stakeholders' Summary*, Laos, para. 34.

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

Laos reiterated its strong commitment to ensuring that all laws governing the freedoms of expression, assembly and association were implemented effectively in practice and noted that “remarkable progress and achievements had been accomplished in that area.”⁹ Similarly, Laos did not accept recommendations demanding enhanced protection of those freedoms¹⁰ because it asserted that “the constitution clearly provides for the freedoms of speech, writing and peaceful assembly not contrary to the law”¹¹ and “the Lao Government is of the view that the limitations contained in the Law on Media are deemed permissible under the ICCPR [i.e. the International Covenant on Civil and Political Rights] in regard to freedom of expression.”¹²

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

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

Second UPR Cycle (20 January 2015)

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

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

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

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

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

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

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

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

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

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

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

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

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

however, provide an update on the practical outcomes of the laws enacted in relation to the freedoms of expression¹⁹ and association.

Stakeholders Submissions Made:²⁰ The summary of the 18 stakeholders' submissions was published on 24 October 2014. While not mentioning LGBTIQ HRDs, stakeholders did express concern as to detention of human rights activists, often without valid legal justification;²¹ the lack of freedom of expression and information;²² and practical obstacles to the work of CSOs before and after registration.²³ One of the joint submissions further recommended the establishment of an NHRI in conformity with the Paris Principles.²⁴

Second UPR Cycle for Laos: Recommendations Received

At the second UPR, held in January 2015, Laos received a number of recommendations directly relevant to HRDs — although not explicitly referring to those working with the LGBTIQ community — namely:

- Fully implement its obligations under ICCPR to respect and ensure the right to freedom of expression (Canada, Uruguay, United Kingdom of Great Britain and Northern Ireland).
- Further promote human rights culture in the country (Uzbekistan), particularly for State agents and civil servants (Morocco).
- Establish an NHRI in accordance with the Paris Principles (Chile, Timor-Leste, Canada, Egypt, Honduras, India, Latvia, Costa Rica, Portugal, Egypt).
- Refrain from undue restrictions, such as the prohibition to engage in the promotion and protection of human rights, in the elaboration of legislation on civil society organisations, and facilitate the registration of international NGOs [i.e. non-governmental organisations] (France, Germany, Luxembourg, Spain, Poland, United States of America, Australia).
- Decriminalise defamation and misinformation (Latvia) and remove all undue restrictions on freedom of expression from the Penal Code, the Law on

¹⁹ Second UPR cycle: *National Report*, Laos, paras. 46-47.

²⁰ *Summary of Stakeholders' submissions prepared by the Office of the United Nations High Commissioner for Human Rights: Lao People's Democratic Republic*, U.N. Doc. A/HRC/WG.6/21/LAO/3, 24 October 2014, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/191/35/PDF/G1419135.pdf?OpenElement> (last visited 29 June 2017).

²¹ Second UPR cycle: *Stakeholders' Summary*, Laos, para. 10.

²² Second UPR cycle: *Stakeholders' Summary*, Laos, paras. 25-27, 33.

²³ Second UPR cycle: *Stakeholders' Summary*, Laos, paras. 30-32.

²⁴ Second UPR cycle: *Stakeholders' Summary*, Laos, para. 3. The Paris Principles are a set of international standards guiding the work of national human rights institutions. See *Principles relating to the Status of National Human Rights Institutions*, U.N. Doc. A/RES/48/134, 20 December 1993, available at <http://www.un.org/documents/ga/res/48/a48r134.htm> (last visited 29 June 2017).

Publications and the newly adopted Internet law in conformity with the country's international human rights obligations (Latvia, Belgium).

- Take all necessary steps to protect HRDs from intimidation, ill-treatment or violence, including enforced disappearances, and to ensure prompt, impartial and thorough investigation of all allegations, including those of enforced disappearances (Ireland).
- Create a framework where civil society, including active human rights NGOs, can be included in the follow-up to the UPR without any fear of retaliation (Belgium).

Source: *Report of the Working Group on the Universal Periodic Review: Lao People's Democratic Republic*, U.N. Doc A/HRC/29/7, 23 March 2015, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/061/51/PDF/G1506151.pdf?OpenElement> (last visited 29 June 2017).

Comments Received; Response to Recommendations: Laos also received comments from delegations during the UPR Interactive Dialogue concerning efforts to promote and protect human rights, including freedom of assembly.²⁵ Laos noted that "violations of individual freedoms of speech, writing, assembly and association were criminal offenses under its Penal Law."²⁶ Laos accepted the recommendations asking to preserve the right to freedom of expression under the ICCPR and its effective exercise by NGOs and HRDs.²⁷ However, it noted without accepting some recommendations²⁸ about freedom of expression,²⁹ stating that:

the Lao PDR constitution and law guarantee the freedom of expression. No legislation in the country allows for suppression of freedoms of assembly and expression. For this very simple reason, the Lao PDR cannot accept this and other similar recommendations.³⁰

The recommendation from Ireland concerning the protection of HRDs and judicial proceedings was noted³¹ and Laos developed its position as follows:

[...] the Lao PDR also has other specific Committees/Commissions that deal with specific human rights. In addition, the Lao PDR's judiciary has jurisdiction to adjudicate

²⁵ Second UPR cycle: *Report of the Working Group*, Laos, paras. 40, 44.

²⁶ Second UPR cycle: *Report of the Working Group*, Laos, para. 88.

²⁷ Second UPR cycle: *Report of the Working Group*, Laos, paras. 121.36, 121.138-121.39, 121.146; *Report of the Working Group on the Universal Periodic Review: Lao People's Democratic Republic, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/29/7/Add.1, 25 June 2015, paras. 121.36, 121.138-121.39, 121.146, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/131/75/PDF/G1513175.pdf?OpenElement> (last visited 29 June 2017).

²⁸ This is standard diplomatic language commonly used by States under review to declare that they do not accept a given recommendation.

²⁹ Second UPR cycle: *Report of the Working Group*, Laos, paras. 121.129, 121.135, 121.137; Second UPR cycle: *Report of the Working Group, Addendum*, Laos, paras. 121.129, 121.135, 121.137.

³⁰ Second UPR cycle: *Report of the Working Group, Addendum*, Laos, para. 121.129.

³¹ Second UPR cycle: *Report of the Working Group*, Laos, paras. 121.156; Second UPR cycle: *Report of the Working Group, Addendum*, Laos, paras. 121.156, 121.129.

human rights related cases, while the National Assembly receives human rights-related and other legitimate complaints from the people.³²

The same answer was given when Laos noted the recommendation about the creation of an NHRI.³³ It stated that Laos was "putting together the existing human rights arrangements and mechanisms, in effect the Lao PDR has national mechanisms that deal with human rights, almost similar to the Paris Principles-based NHRI."³⁴

Laos finally noted without accepting the recommendations with the goal to facilitate the registration of international NGOs.³⁵ It explained that:

[t]he Lao Government has adopted the Guidelines on the implementation of the Prime Minister's Decree on INGOs. (...) The Guidelines are not aiming at restrictions but effectively managing and facilitating the activities of INGOs [i.e. international non-governmental organisations] which have made meaningful contributions to the development of the Lao PDR. The concerns raised by some INGOs concerning the Guidelines, especially tax issue have been addressed to the satisfaction of all parties.³⁶

Finally, Laos stated that it looked forward to "continuing cooperation and engagement in the UPR process to further exchange experience and lessons as well as to learn human rights best practices on the basis of sovereign equality, trust, and mutual respect."³⁷

Situation of the LGBTIQ Community and its HRDs in Laos

The LGBTIQ community and its defenders in Laos are unfortunately largely "invisible."³⁸ For this reason, obtaining data on their situation is difficult, and in turn, this Country Profile is necessarily comparatively limited in its extent.

Freedom of Assembly, and the Right to Freely Participate in the Cultural Life of the Community

Pride and IDAHOT Events: On 25 June 2012, Laos held its first pride event, "Proud to be Us!", on the premises of the Embassy of the United States of America (**USA**) in Vientiane, attended

³² Second UPR cycle: *Report of the Working Group, Addendum*, Laos, para. 121.51.

³³ Second UPR cycle: *Report of the Working Group*, Laos, paras. 121.51-121.60; Second UPR cycle: *Report of the Working Group, Addendum*, Laos, paras. 121.51-121.60.

³⁴ Second UPR cycle: *Report of the Working Group, Addendum*, Laos, para. 121.51.

³⁵ Second UPR cycle: *Report of the Working Group*, Laos, paras. 121.129, 121.147-121.148, 121.150, 121.152-121.153, 121.155; Second UPR cycle: *Report of the Working Group, Addendum*, Laos, paras. 121.129, 121.147-121.148, 121.150, 121.152-121.153, 121.155.

³⁶ Second UPR cycle: *Report of the Working Group, Addendum*, Laos, para. 121.129.

³⁷ Second UPR cycle: *Report of the Working Group*, Laos, para. 120.

³⁸ Dominique Mosbergen, "In Laos, An Invisible Minority Is Finding Its Voice", *The WorldPost*, 19 October 2015, available at http://www.huffingtonpost.com/entry/lgbt-laos_us_5616433ce4b0e66ad4c681cc (last visited 20 July 2017).

by more than one hundred people.³⁹ Anan Bouapha, one of the main organisers and a member of the community "Proud to be us – Laos," called the pride event a "first victory for the LGBT movement in this country."⁴⁰ In 2013, "Proud to be Us!" was re-organised with the support of various organisations, including the British and German Embassies in Vientiane.⁴¹

However, in 2014, the event was cancelled. Mixed reports suggested that the event was cancelled either for technical reasons⁴² or to fears of "partner organisations and the community were [...], due to the reaction from the heightened level."⁴³ Despite this setback, "Proud to be Us!" returned in 2015, being officially organised with the support of the European Union (EU) to mark the International Day against Homophobia, Transphobia and Biphobia (IDAHOT).⁴⁴ More than a dozen local activists and diplomats from the USA, Australian, British and French embassies attended,⁴⁵ and the Lao National Television covered the event and aired an interview with LGBTIQ HRDs - reportedly, the first time that such content has been aired on Lao television.⁴⁶

In 2016, IDAHOT was again marked in Laos through "Proud to be Us!", with the support of the EU.⁴⁷ The LGBTIQ HRDs who organised that event noted that security was a concern and that it was because the event was held in the EU compound that they felt safe.⁴⁸ A year later, in May 2017, IDAHOT was marked with the support of the Embassies of Australia, Canada, the USA, the EU, and the United Kingdom.⁴⁹

³⁹ "U.S. Embassy Supports Laos' First LGBT Pride Event", Embassy of the United States in Vientiane, Laos, 26 June 2012, available at https://web.archive.org/web/20130217202251/https://laos.usembassy.gov/press_jun26p.html (last visited 20 July 2017).

⁴⁰ "U.S. Embassy Supports Laos' First LGBT Pride Event", Embassy of the United States in Vientiane, Laos, 26 June 2012.

⁴¹ "Embassy pledges support for Laos' second annual Gay Pride event", British Embassy Vientiane in Laos, 17 May 2013, available at <https://www.gov.uk/government/world-location-news/embassy-pledges-support-for-laos-second-annual-gay-pride-event> (last visited 20 July 2017).

⁴² "Celebrating IDAHOT for the first time: Insight into a milestone event", International Day Against Homophobia, Transphobia & Biphobia, no date, available at <http://dayagainsthomophobia.org/celebrating-idahot-for-the-first-time-insight-into-a-milestone-event> (last visited 10 October 2017).

⁴³ Anna Leach, "Fighting for the right to love - your #LGBTChange heroes", The Guardian, 14 February 2016, available at <https://www.theguardian.com/global-development-professionals-network/2016/feb/14/fighting-for-the-right-to-love-your-lgbtchange-heroes> (last visited 20 July 2017).

⁴⁴ Darren Wee, "Laos celebrates IDAHOT for the first time", Gay Star News, 5 June 2015, available at <https://www.gaystarnews.com/article/laos-celebrates-idahot-first-time050615/> (last visited 28 June 2017).

⁴⁵ Darren Wee, "Laos celebrates IDAHOT for the first time", Gay Star News, 5 June 2015.

⁴⁶ Lao NEWS on LNTV, "EU celebrates IDAHOT in Vientiane. 20/5/2015", Youtube, 21 May 2015, available at <https://www.youtube.com/watch?v=DTbm1vn81Wk> (last visited 20 July 2017).

⁴⁷ Anan Bouapha & Anna Blue, "Proud to be us Laos", Guardian Witness, February 2016, available at <https://witness.theguardian.com/assignment/569e69bee4b06544a9da91da/1916631> (last visited 20 July 2017).

⁴⁸ "Celebrating IDAHOT for the first time: Insight into a milestone event", International Day Against Homophobia, Transphobia & Biphobia, no date.

⁴⁹ "Proud to be Us – Laos", Facebook Page, May 2017, available at https://www.google.com/url?q=https://www.facebook.com/pg/proudtobeuslaos/photos/?tab%3Dalbum%26album_id%3D1368527536567317&sa=D&ust=1499142051167000&usq=AFQjCNExBDUJU-xKrs0aMP24slghrOwEw (last visited 20 July 2017).

Right to Equality and Non-Discrimination

Legal Situation: While Laos does not currently have discriminatory laws in place based on SOGIESC identity,⁵⁰ it equally lacks specific laws protecting the LGBTIQ community.⁵¹

HIV/AIDS Prevention: Among men who have sex with men (**MSM**), the prevalence of Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (**HIV/AIDS**) has been exceptionally high, reportedly at a rate of 5.8% compared to 0.2% for the general population in 2007.⁵² In addition to various CSO programs supporting MSM including those living with HIV/AIDS,⁵³ the Ministry of Health has undertaken public awareness campaigns to increase tolerance and understanding of HIV/AIDS⁵⁴ and has established a centre for HIV/AIDS and sexually transmitted infections (**STIs**).⁵⁵

Discrimination in Practice: According to a 2016 US Department of State report, the LGBTIQ community in Laos faces certain discrimination in practice.⁵⁶ According to the US Department of State, LGBTIQ people face societal discrimination in terms of housing as well as employment, with LGBTIQ HRDs reporting that members of the LGBTIQ community would refrain from applying for government or top private-sector roles on the basis that "there was a tacit understanding that employers were unwilling to hire them."⁵⁷

Both lesbians⁵⁸ and gay men⁵⁹ have been separately identified as members of the LGBTIQ facing particular social stigma and discrimination, including possible verbal and physical abuse by private citizens.⁶⁰ In addition, it is generally reported that there is widespread ignorance about the LGBTIQ community throughout Laos.⁶¹

Conclusion

Since its first UPR cycle, Laos has made efforts to address some of the recommendations received by other delegations in relation to human rights training, freedom of expression, and other rights that affect HRDs if countries infringe upon them. However, Laos has not accepted

⁵⁰ "Laos 2016 Human Rights Report", U.S. Department of State, 2016, p. 25, available at <https://www.state.gov/documents/organization/265560.pdf> (last visited 10 October 2017).

⁵¹ "Laos: Freedom in the World 2016", Freedom House, 2016, available at <https://freedomhouse.org/report/freedom-world/2016/laos> (last visited 10 October 2017). See also Anna Leach, "Lao and proud: LGBT rights in Laos", Gay Star News, 9 July 2012, available at https://www.gaystarnews.com/article/lao-and-proud-lgbt-rights-laos090712/#gs.U_SoE1M (last visited 10 October 2017).

⁵² Anna Leach, "Lao and proud: LGBT rights in Laos", Gay Star News, 9 July 2012.

⁵³ "Celebrating IDAHOT for the first time: Insight into a milestone event", International Day Against Homophobia, Transphobia & Biphobia, no date.

⁵⁴ "Laos 2016 Human Rights Report", U.S. Department of State, 2016, p. 26.

⁵⁵ Anna Leach, "Lao and proud: LGBT rights in Laos", Gay Star News, 9 July 2012.

⁵⁶ "Laos 2016 Human Rights Report", U.S. Department of State, 2016, p. 25.

⁵⁷ "Laos 2016 Human Rights Report", U.S. Department of State, 2016, pp. 25-26.

⁵⁸ "Laos 2016 Human Rights Report", U.S. Department of State, 2016, p. 26.

⁵⁹ Anna Leach, "Lao and proud: LGBT rights in Laos", Gay Star News, 9 July 2012.

⁶⁰ Anna Leach, "Lao and proud: LGBT rights in Laos", Gay Star News, 9 July 2012.

⁶¹ "Celebrating IDAHOT for the first time: Insight into a milestone event", International Day Against Homophobia, Transphobia & Biphobia, no date. See also "Laos 2016 Human Rights Report", U.S. Department of State, 2016, p. 26.

all recommendations and could strive to strengthen protection of the freedoms of assembly and association in particular.

The current situation in Laos reflects this mixed response. While there have been a number of noteworthy advancements for Laos's LGBTIQ community, including ongoing annual Pride and IDAHOT celebrations and government health and communication programs focused on HIV/AIDS, LGBTIQ people continue to face discriminatory practices. There is also limited information available about the treatment of LGBTIQ HRDs, and a concerning broader context imposing stringent restrictions on the operations of HRDs and CSOs.⁶² Taking into account the limited legal framework in Laos protecting the LGBTIQ community and their defenders, it is clear that both remain vulnerable.

Recommendations

In the lead-up to the third UPR review of Laos in January/February 2020:

- CSOs should actively engage in monitoring the implementation of those recommendations Laos accepted during the first two UPR cycles so as to gather relevant data on the improvement of the human rights situation in the country and to report at the third UPR cycle.
- CSOs should focus on documenting and disseminating information on the situation and any specific violations and abuses endured by LGBTIQ people and their defenders so as to provide recommending states and the relevant UN mechanisms with solid evidence-based information.
- CSOs and recommending states should work collaboratively to develop UPR recommendations for Laos's third cycle that focus on strengthening legal protections for, eliminating discriminatory practices against, and encouraging greater visibility of, the LGBTIQ community and LGBTIQ HRDs.

⁶² "Laos: Freedom in the World 2017", Freedom House, 2017, available at <https://freedomhouse.org/report/freedom-world/2017/laos> (last visited 10 October 2017); "Laos: Freedom in the World 2016", Freedom House, 2016.

Laos: LGBTIQ HRD Interview

Human Rights of LGBTIQ
Communities and HRDs:
Frontline Voices

Anonymous*

*** Due to personal safety concerns, the human rights defender (HRD) featured in this interview has requested to remain anonymous.**

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

The biggest challenge is the perception and stereotype of people towards LGBT people what is in the back of their mind is that they don't know LGBT, who they really are and so on. They only know the word 'gay'. When we try to advocate them, they seem to ignore, they are not interested in knowing this issue and the situation, so this is another thing we are working and advocating on.

We want people to see the importance of working on the rights, and especially LGBTIQ rights. It's essential because people think 'LGBT, you are gay, and we have human rights laws to cover you, and that's it.' The worst thing is, people also think LGBTIQ people is the disease carrier, which is completely not true.

So, there are many points we can work on and advocate about together with many partners and stakeholders. We would like to change their perception towards LGBT people in terms of their ability, capacity and

skills, as well as their contribution to the development work, but to do that it takes time and needs support from many partners altogether, especially development agencies and local government partners. In terms of government, they are supporting and can be more supportive, and we just still need more supports.

Moreover, LGBTIQ community would very much like to work alongside with them and contribute to the work of the national, due to we believe that working together we will be able to step further concretely.

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

I personally feel it a bit, actually, but just a bit. However I know what I'm doing and we try to do it safe, plus we are not doing anything against anyone. We are trying to blend in, understand what we can and cannot do, understand the situation, as well as the country context and our local culture and traditional.

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

I would say it's about knowing and understanding the local context and trying to blend in and deal with it, because I think if we clearly know and understand the local context, we know which way to go, and how we'll be able to deal with LGBT topics and

support them. Due to, if we don't know or understand clearly about the local context, we may do something wrong and it may affect to the community. We can try to apply some best practices from neighbouring countries to our activities in Laos with the support from local partners and with the hope to get the support from government partners. Another thing is to know where and what stage that LGBTI community stand at the moment and where we can go from there together, and with other partners, as well as reaching out to the existing supporters/donors who are keen to assisting the community on this topic.

How have things changed over the past few years regarding LGBTIQ rights and being an HRD?

Regarding LGBT rights, what I can see changing is more opportunities and supports from the international donors, such as the embassies, some local organisation partners to support the LGBT community to conduct the activities and collaboration. Compared to previous years, there was a level of difficulties to reach them, as well as community themselves not that hardly able to make a move in terms of their own community but since we started something back in few years ago, we see positive change.

There are a lot of things to advocate on and cooperation especially from the grassroots to the national level. However, what we are having at the moment is better than previous year, and I have hope and see that there will be another positive change in each year, step by step, even though it may takes

longer or slower than other neighbouring countries, but it will be surely happens.

Is there anything in particular that has happened that has been difficult for you as an HRD?

Not only as a HRD, but also LGBT people in general, we are concerned about safety of LGBTIQ community since there was a disappearance of one of the development worker leaders in Laos back in many years ago. However, I have been trying to get people understand that what we have been doing is promoting our visibility and our ability and capacity to contribute to the society and development work.

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

Yes, it's had an impact at some points or levels, but not that much. I personally expect to see more from UPR in terms of assisting influencing the policymakers/making level to take LGBTIQ topic in an account and more, as well as to include LGBTIQ community in the decision-making level more. I believe that UPR can help making an impact for my country in terms of human rights. However, but what they do with the recommendations is good, we can rely on that where necessary but I'm expecting to see more from UPR, due to its literally not making a huge impact at the moment that it was supposed to be.

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

Some people, levels or organisations, especially whom had a chance to meet or train with the UPR information team, because they organised training for them. So they will be able to apply that or recommendations to their work and make positive change. However, I personally think not that efficient that much.

The LGBT advocates use those recommendations where necessary, which is good. But not that sure if it will work out well, and we still expect to see more engagement from UPR and LGBTIQ together, plus who were trained on this, should have been able to contribute or advocate more to other HRD or LGBTI advocates, or on the grassroots level at least.

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

What gives me hope would be the local LGBT advocates and community ourselves. Because we now are getting to know more LGBTIQ advocates, who would like to join this ride together with us and aim the same things. Plus, the existing opportunity in terms of support from international donors and local organisations including civil society organisations (**CSOs**), as well as government partners, moreover, I can see more to come in the future, due to I believe that the more we are trying to do at the moment, the more supports and things would come and happen in the future. These gives me hope to see the progress and positive vibes of LGBTIQ people in Laos.

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**).¹

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).

¹ 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**),² and by the European Union in the EU Guidelines on Human Rights Defenders.³ 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.

² 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).

³ 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 (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."⁴ 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.

⁴ "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 (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.

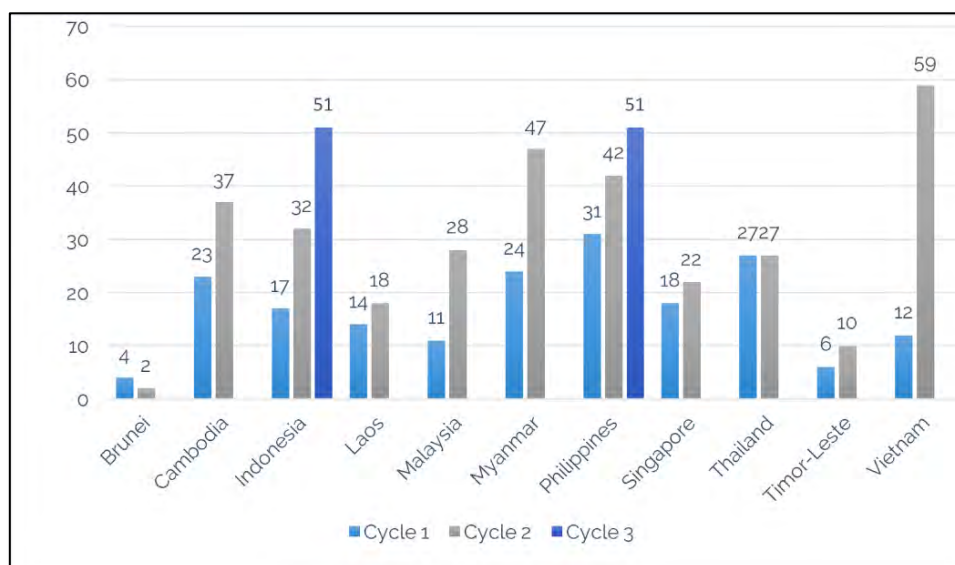


Figure 1: Southeast Asian Stakeholder UPR Submissions in Each Cycle

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**),¹ the International Covenant on Civil and Political Rights (**ICCPR**),² and the International Covenant on Economic, Social and Cultural Rights (**ICESCR**).³ 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**).⁴

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**);⁵ the ASEAN Human Rights Declaration (**AHRD**), applicable to all ASEAN member states;⁶ and the Declaration on the Right and Responsibility of Individuals,

¹ 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 (last visited 16 November 2017).

² 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).

³ 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).

⁴ 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).

⁵ 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 (last visited 16 November 2017).

⁶ 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 (last visited 16 November 2017).

Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (DHRD).⁷

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.

⁷ 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.⁸ Furthermore, the CCPR has also expressed concerns about the criminalisation of consensual sexual acts between adults of the same sex,⁹ and called for the decriminalisation of these acts.¹⁰

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."¹¹

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

⁸ 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 (last visited 17 November 2017).

⁹ 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 (last visited 17 November 2017).

¹⁰ 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).

¹¹ 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).

¹² 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.¹³

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.¹⁴

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).

¹³ 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.

¹⁴ "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.¹⁵

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

Article 12 of the AHRD¹⁷ refers to the “right to **personal** liberty and security”¹⁸ instead of the more common “right to liberty and security of person.”¹⁹ 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.²⁰

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].

¹⁵ 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 (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 (last visited 17 November 2017).

¹⁶ 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 (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).

¹⁷ *ASEAN Human Rights Declaration*, 18 November 2012, Principle 12, available at http://aichr.org/?dl_name=ASEAN-Human-Rights-Declaration.pdf (last visited 17 November 2017).

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

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

²⁰ “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.”²¹ Moreover, States Parties are not to interpret the right to life narrowly but must act proactively to protect the right of life.²²

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.²³

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.²⁴ Considering the UN’s stance that same-sex sexual relations should not be criminalised whatsoever,²⁵ such acts would not, therefore, be considered a “most serious crime.”

²¹ 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).

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

²³ “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).

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

²⁵ 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.²⁶ Moreover, the use of medical experimentation without consent is within the scope of the definition of torture.²⁷ Finally, any information gained through torturous acts is impermissible.²⁸

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

²⁶ 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).

²⁷ 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.

²⁸ 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."²⁹

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",³⁰ 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.³¹ His mandate includes the requirement "[t]o integrate a gender perspective throughout [his] work."³²

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.

²⁹ *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).

³⁰ 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).

³¹ "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).

³² 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."³³

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.³⁴

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.

³³ 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).

³⁴ 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,³⁵ 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.³⁶

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.³⁷

In 1982, the CCPR permitted restrictions on a television and radio program discussing homosexuality³⁸ 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,³⁹ 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.⁴⁰

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

³⁵ "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).

³⁶ 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).

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

³⁸ "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).

³⁹ "Chapter four: Freedom of Assembly, Association and Expression", ICJ, 2012.

⁴⁰ "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.⁴¹

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

⁴¹ 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."⁴² 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."⁴³ 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.⁴⁴

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

⁴² 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 (last visited 22 November 2017).

⁴³ 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).

⁴⁴ 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.”⁴⁵ 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.⁴⁶ Furthermore, the ICESCR “prohibit[s] any

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

⁴⁶ 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."⁴⁷

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 [...].

⁴⁷ 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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